

EXHIBIT "A"

1 (Pages 1 to 4)

<p style="text-align: center;">Page 1</p> <p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY</p> <p style="text-align: center;">---</p> <p>BRADLEY MANN, et al., on : Civil Class Action behalf of himself and all : others similarly situated :</p> <p style="text-align: center;">v. :</p> <p style="text-align: center;">:</p> <p>TD BANK, NA, et al. : 1:09-CV-01062-RBK-AMD</p> <p style="text-align: center;">---</p> <p style="text-align: center;">Thursday, March 18, 2010</p> <p style="text-align: center;">---</p> <p>Deposition of MATTHEW J. CHEVALIER, taken at the law offices of Pepper Hamilton, LLP, Two Logan Square, Suite 3000, Philadelphia, Pennsylvania 19103, on the above date, beginning at 10:00 a.m., before Brad Tratenberg, Court Reporter and Notary Public.</p> <p style="text-align: center;">---</p> <p style="text-align: center;">FRANCINE K. GUOKAS COURT REPORTING 7 Galena Court Erial, NJ 08081 (215)726-8855 (856)782-1640</p>	<p style="text-align: center;">Page 3</p> <p>1 (It is stipulated by and between 2 counsel for the respective parties that 3 sealing, certification and filing are waived; 4 and that all objections, except as to the form 5 of the question, are reserved until the time of 6 trial.)</p> <p style="text-align: center;">---</p> <p>8 ...MATTHEW J. CHEVALIER, having been 9 duly sworn, was examined and testified as 10 follows: 11 BY MR. LALLI: 12 Q Mr. Chevalier, we just met previously. My name 13 is Michael Lalli and I represent some plaintiffs in a 14 class action that was brought against TD Bank. We're 15 here today to take your deposition. Have you ever been 16 deposed before? 17 A I have not. 18 Q Do you know what a deposition is generally? 19 A Yes. 20 Q I'm going to go over a few ground rules just to 21 make it simpler, more efficient. It's best if you wait 22 until I finish asking my question before you begin 23 answering the question. That way the court reporter can 24 take down one person speaking at a time instead of</p>
<p style="text-align: center;">Page 2</p> <p>2 APPEARANCES: 3 MICHAEL P. LALLI, ESQ. 4 -and- 5 LEONARD V. FODERA, ESQ. of SILVERMAN & FODERA 1835 Market Street, 26th Floor Philadelphia, Pennsylvania 19103 Counsel for Plaintiffs 6 STEPHEN G. HARVEY, ESQ. of PEPPER HAMILTON, LLP Two Logan Square, Suite 3000 Philadelphia, Pennsylvania 19103 Counsel for Defendants 7 8 9 10 --- 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p style="text-align: center;">Page 4</p> <p>1 having to figure out two people speaking at a time. 2 If you don't understand a question I 3 ask, please let me know. I'm not the greatest wordsmith 4 in the world. So if I ask you a question that's poorly 5 worded and you don't quite understand it, let me know. 6 If you do answer the question, I'm going to assume that 7 you heard it and that you understood it. Is that fair 8 for me to assume? 9 A Yes. 10 Q If at any time you want to take a break, let me 11 know. The only caveat to that is, if there's a question 12 pending, I'm going to ask you to answer the question and 13 then you can take your break. Okay? 14 A Okay. 15 Q I'm going to ask you to respond to me verbally, 16 no nods of the head or shrugs of the shoulders or uh-uhs 17 or um-hms, because everything's being taken down and 18 it's much easier to take down a yes than it is to take 19 down an uh-huh. Okay? 20 A Okay. 21 Q And you understand that you were just put under 22 oath, so the testimony you give here today has the same 23 force and effect as if it were given in court? 24 A I do.</p>

<p style="text-align: center;">Page 5</p> <p>1 Q Could you please state your name for the</p> <p>2 record?</p> <p>3 A Matthew James Chevalier.</p> <p>4 Q And what's your current address?</p> <p>5 MR. HARVEY: Can we just -- I don't</p> <p>6 think we need to have the witness' home address</p> <p>7 on the record.</p> <p>8 MR. LALLI: A business address is fine.</p> <p>9 THE WITNESS: 70 Gray Road in Falmouth,</p> <p>10 Maine.</p> <p>11 BY MR. LALLI:</p> <p>12 Q And do you understand that you've been brought</p> <p>13 here to testify on behalf of TD Bank?</p> <p>14 A I do.</p> <p>15 Q And you understand you've been brought here to</p> <p>16 testify about specific topics on behalf of TD Bank?</p> <p>17 A Yes.</p> <p>18 MR. LALLI: I'm going to mark this as</p> <p>19 Chevalier-1.</p> <p>20 (Document marked for identification as</p> <p>21 Chevalier exhibit 1.)</p> <p>22 BY MR. LALLI:</p> <p>23 Q Mr. Chevalier, I've just passed you a</p> <p>24 deposition notice. Have you ever seen this document</p>	<p style="text-align: center;">Page 7</p> <p>1 testimony to offer on topics B, C, D, E, F, G,</p> <p>2 H, L and M. And I clarified that M, when it</p> <p>3 says takeover, it was a merger. In our</p> <p>4 previous conversation, we verified that you</p> <p>5 weren't interested in the corporate</p> <p>6 transaction, you were interested in integration</p> <p>7 of the Commerce Bank gift card program into TD</p> <p>8 Bank, NA.</p> <p>9 MR. LALLI: That's fair.</p> <p>10 BY MR. LALLI:</p> <p>11 Q Mr. Chevalier, your counsel just identified</p> <p>12 that you're knowledgeable regarding B through H and L</p> <p>13 and M. Is that fair? Is that correct?</p> <p>14 A That's correct.</p> <p>15 Q Are you knowledgeable on any other of the</p> <p>16 topics?</p> <p>17 MR. HARVEY: I'm going to object. I've</p> <p>18 already identified the topics on which he will</p> <p>19 be providing corporate designee testimony.</p> <p>20 MR. LALLI: Okay, I'm still going to</p> <p>21 ask him if he's knowledgeable in certain areas.</p> <p>22 I think it's fair for me to ask what his</p> <p>23 knowledge is.</p> <p>24 MR. HARVEY: He's here in his</p>
<p style="text-align: center;">Page 6</p> <p>1 before or any parts of this document before? And you</p> <p>2 can read through it.</p> <p>3 A Yes.</p> <p>4 Q You have seen it before?</p> <p>5 A I've seen these alphabetized pieces before,</p> <p>6 yes.</p> <p>7 Q So you're talking about the underneath matters</p> <p>8 upon which examination is requested? There's A through</p> <p>9 M. You've seen that before?</p> <p>10 A Correct.</p> <p>11 MR. HARVEY: Mike, can I ask a</p> <p>12 clarification? This deposition notice has the</p> <p>13 caption for the Pennsylvania action on it. I</p> <p>14 believe there's a similar notice for the New</p> <p>15 Jersey action that's identical. And Mr.</p> <p>16 Chevalier is here today testifying pursuant to</p> <p>17 both of those notices. Is that correct?</p> <p>18 MR. LALLI: That's fine.</p> <p>19 MR. HARVEY: And I will identify -- I</p> <p>20 sent you an e-mail yesterday identifying the</p> <p>21 topics on which this witness would be able to</p> <p>22 offer testimony. He may not be the only</p> <p>23 witness to offer testimony on these subjects.</p> <p>24 But I told you that he would have some</p>	<p style="text-align: center;">Page 8</p> <p>1 individual capacity. So you can ask questions</p> <p>2 that go beyond the corporate designee scope.</p> <p>3 MR. LALLI: We'll get to that when we</p> <p>4 get to it, I guess.</p> <p>5 BY MR. LALLI:</p> <p>6 Q Before today, before this deposition, what did</p> <p>7 you do to prepare for the deposition?</p> <p>8 A I met with my lawyer, my legal counsel. And I</p> <p>9 reviewed our training materials just to refresh myself</p> <p>10 on what we had put out. And I reviewed or refreshed</p> <p>11 myself on just some of the dates in terms of my own</p> <p>12 personal career and on different key dates relative to</p> <p>13 the gift card program.</p> <p>14 Q So you spoke with your lawyer. Did you speak</p> <p>15 with anyone else?</p> <p>16 A We had --</p> <p>17 MR. HARVEY: I'm going to object.</p> <p>18 Well, the answer to that is a yes or no.</p> <p>19 THE WITNESS: It's a yes.</p> <p>20 BY MR. LALLI:</p> <p>21 Q Other than your lawyer, who did you speak with</p> <p>22 to prepare for this deposition?</p> <p>23 A I spoke with the product manager.</p> <p>24 Q And who's the product manager?</p>

<p style="text-align: center;">Page 9</p> <p>1 A Pattie Gallant.</p> <p>2 Q Anyone else?</p> <p>3 A Operations, Jim Grimmer.</p> <p>4 Q Anyone else?</p> <p>5 A With counsel. Dan Kadelski.</p> <p>6 Q And what's Dan Kadelski's title?</p> <p>7 A I'm not sure of his actual title. He's</p> <p>8 operations for debit.</p> <p>9 Q And anyone else?</p> <p>10 A No.</p> <p>11 Q When you spoke with Pattie, was it just you and</p> <p>12 Pattie?</p> <p>13 A No, this group. Not so much Jim in the group.</p> <p>14 But it was pretty much Pattie, Dan and our legal</p> <p>15 counsel.</p> <p>16 Q Legal counsel that's here today?</p> <p>17 A Correct, Mr. Harvey.</p> <p>18 Q And you said not with Jim. You spoke with Jim</p> <p>19 on your own accord?</p> <p>20 A No. I've spoken with Jim about gift card but</p> <p>21 not in relation to this case.</p> <p>22 Q Not in relation to this deposition?</p> <p>23 A Correct.</p> <p>24 Q But you have spoken to him about gift cards?</p>	<p style="text-align: center;">Page 11</p> <p>1 A No.</p> <p>2 MR. HARVEY: Could we go off the record</p> <p>3 for just a second?</p> <p>4 MR. LALLI: Sure.</p> <p>5 (Discussion off the record.)</p> <p>6 BY MR. LALLI:</p> <p>7 Q Anyone else that you spoke to?</p> <p>8 A The individual -- I spoke to an individual</p> <p>9 about the complaint today. Her name is Mamie Prout.</p> <p>10 Q Could you spell the last name for me?</p> <p>11 A I believe it's P-R-O-U-T.</p> <p>12 Q And her name is Mamie?</p> <p>13 A Yes, M-A-M-I-E, I believe.</p> <p>14 Q And she is a TD Bank employee or officer?</p> <p>15 A She runs our chairman service club or service</p> <p>16 program.</p> <p>17 Q What's the chairman service program?</p> <p>18 A That program is if a complaint or --</p> <p>19 Q Let me interrupt you for one second. When you</p> <p>20 say a complaint, you mean a customer complaint?</p> <p>21 A A customer complaint, yes. If a customer</p> <p>22 complaint comes to the president, it will get referred</p> <p>23 to the chairman service club or service program.</p> <p>24 Q And you spoke with her today?</p>
<p style="text-align: center;">Page 10</p> <p>1 A Yes, because he's our operations manager.</p> <p>2 Q Just in the normal course of your --</p> <p>3 A Just in the normal course of business</p> <p>4 operations.</p> <p>5 Q And you said you reviewed training materials?</p> <p>6 A Yes.</p> <p>7 Q Any other documents you reviewed?</p> <p>8 A Yes.</p> <p>9 Q And what were those?</p> <p>10 A So the training materials, just to refresh</p> <p>11 myself market-wise, what we put out, and refreshed</p> <p>12 myself on the policies and procedures.</p> <p>13 Q Anything else?</p> <p>14 A I read the deposition of Jim Grimmer. I read</p> <p>15 the deposition of the plaintiff.</p> <p>16 Q Which plaintiff, if you can remember?</p> <p>17 A I'm trying to think. Her name escapes me. Her</p> <p>18 name escapes me.</p> <p>19 Q Could it have been Fern Rutberg?</p> <p>20 A It was Rutberg. Thank you.</p> <p>21 Q Any other deposition transcripts besides Mr.</p> <p>22 Grimmer's and Miss Rutberg's?</p> <p>23 A No. I also read the complaint.</p> <p>24 Q Any other documents?</p>	<p style="text-align: center;">Page 12</p> <p>1 A Correct.</p> <p>2 Q And you spoke with her over the phone, in</p> <p>3 person?</p> <p>4 A I spoke with her over the phone.</p> <p>5 Q And what did you guys talk about?</p> <p>6 A I wanted to get --</p> <p>7 MR. HARVEY: I'm just going to clarify</p> <p>8 for the record that this witness has done some</p> <p>9 things to prepare for a deposition to testify</p> <p>10 as a corporate designee. As to those, there's</p> <p>11 no attorney-client privilege, or work product,</p> <p>12 more importantly. So he can testify about</p> <p>13 that. Other conversations that he may have had</p> <p>14 with people in the bank that were not intended</p> <p>15 to prepare him to testify, they were covered by</p> <p>16 the work product privilege. They were done in</p> <p>17 connection with preparation for this litigation</p> <p>18 but not to prepare himself to testify. So</p> <p>19 there's a distinction there. He can tell you</p> <p>20 about the conversation with Mamie Prout.</p> <p>21 THE WITNESS: Right. So my</p> <p>22 conversation with Mamie Prout was to get an</p> <p>23 understanding of the number of complaints that</p> <p>24 we've had relative to the gift card program and</p>

<p style="text-align: center;">Page 13</p> <p>1 how we've handled it.</p> <p>2 BY MR. LALLI:</p> <p>3 Q Let's just jump right to that because we've</p> <p>4 already brought it up, and we'll go back to other</p> <p>5 things. How do you handle a complaint about the gift</p> <p>6 card program? And by "you," I mean TD Bank.</p> <p>7 A Okay, yes, because I don't handle the</p> <p>8 complaints. When a complaint is made, usually it can be</p> <p>9 made in the store or over the phone. Depending on the</p> <p>10 nature of the complaint, whoever is receiving that</p> <p>11 complaint will try and resolve it any way they can. In</p> <p>12 the case of the chairman service department or office,</p> <p>13 when those come in either through phone call or through</p> <p>14 letter, they will be responded to with a phone call or</p> <p>15 with a letter back to the customer, depending on how --</p> <p>16 usually we'll respond to 100 percent of the letters that</p> <p>17 we receive.</p> <p>18 Q And the people who respond to those complaints</p> <p>19 are those that work in the chairman services program?</p> <p>20 A Yes, they're responsible, yes. If they need</p> <p>21 clarity, they'll come to product management.</p> <p>22 Q And who's product management?</p> <p>23 A That would be my group.</p> <p>24 Q And who is in your group other than yourself?</p>	<p style="text-align: center;">Page 15</p> <p>1 were in relation to fees. The remainder would be,</p> <p>2 whether it be a procedural problem of whether the card</p> <p>3 wasn't loaded correctly or -- pretty much if the card</p> <p>4 wasn't loaded correctly. That's what Mamie had told me.</p> <p>5 Q And the 50 percent that regarded fees, any</p> <p>6 specific type of fee?</p> <p>7 A She just said fees.</p> <p>8 Q Do you know how those complaints were handled?</p> <p>9 A So our goal always is to make the customer</p> <p>10 whole. So what she told me is, if there was a complaint</p> <p>11 in regard to the fees, for the most part, they would be</p> <p>12 reimbursed.</p> <p>13 Q When you say for the most part, could you give</p> <p>14 me any more specific --</p> <p>15 A No. She said we will always try to make the</p> <p>16 customer whole, give them their fees back.</p> <p>17 Q So if a customer complained, for instance, that</p> <p>18 a dormancy fee or a maintenance fee was assessed on</p> <p>19 their card and they complained to the chairman services</p> <p>20 program, odds are that fee would then be reimbursed to</p> <p>21 the customer?</p> <p>22 A I would say that's speculation. What she told</p> <p>23 me was, if it was fee-related, they would try to make</p> <p>24 the customer whole and give them their fees back.</p>
<p style="text-align: center;">Page 14</p> <p>1 A So I'm responsible for day-to-day product</p> <p>2 management. So I have a staff of five people.</p> <p>3 Q Who are they?</p> <p>4 A They all deal with the checking business. So</p> <p>5 her name is Shelly Photiades. These folks don't have</p> <p>6 anything to do with gift card.</p> <p>7 Q That's fine.</p> <p>8 A They're in the product management group.</p> <p>9 Sherry Fotiatis, Chris Prew, Julie Johnson, Erin Wolf</p> <p>10 and Lindsay Sacknoff.</p> <p>11 Q And at what locality does your group work?</p> <p>12 A They're in Falmouth.</p> <p>13 Q So getting back to the customer complaints, you</p> <p>14 said you talked to Mamie about the number of complaints,</p> <p>15 the type of complaints with the gift cards. How many</p> <p>16 complaints have you guys received over the years</p> <p>17 regarding gift cards from customers?</p> <p>18 A So from 2007 to 2009, we've received 81</p> <p>19 complaints from gift cards.</p> <p>20 Q And I'm sure you don't know the nature of each</p> <p>21 one of those 81 complaints. Could you give me a</p> <p>22 breakdown or some more specific information about what</p> <p>23 types of complaints were made?</p> <p>24 A So approximately 50 percent of the complaints</p>	<p style="text-align: center;">Page 16</p> <p>1 Q Now, these complaints were coming in through</p> <p>2 phone, through letter? Any e-mail complaints?</p> <p>3 A We didn't get in the details of how they came</p> <p>4 in. She just told me the number of the complaints.</p> <p>5 Q What type of, I guess, records are kept</p> <p>6 regarding these customer complaints?</p> <p>7 A So I can answer relative to letters. So if</p> <p>8 it's a letter that's been written to the president, we</p> <p>9 would keep a copy of the letter.</p> <p>10 Q And who's "we"?</p> <p>11 A Sorry. "We" as in the bank, the chairman</p> <p>12 services club would keep the letter.</p> <p>13 Q And is Mamie Prout the person to talk to if you</p> <p>14 wanted to get those records?</p> <p>15 A If I wanted to get those records?</p> <p>16 Q Yes.</p> <p>17 A Yes.</p> <p>18 Q Besides Mamie -- now, does she run the chairman</p> <p>19 services program?</p> <p>20 A Yes.</p> <p>21 Q Is there a committee that runs it or is it just</p> <p>22 her?</p> <p>23 A I'm not sure. She's responsible for it. So</p> <p>24 she has bosses above her but she's responsible for the</p>

<p style="text-align: center;">Page 17</p> <p>1 chairman services program.</p> <p>2 Q She's the go-to person?</p> <p>3 A She's the go-to person.</p> <p>4 Q We may get back to complaints, but let's get</p> <p>5 back to some more basic information.</p> <p>6 A Sure.</p> <p>7 Q Where did you go to college?</p> <p>8 A I went to the University of Western Ontario in</p> <p>9 London, Ontario, Canada.</p> <p>10 Q Are you originally from Canada?</p> <p>11 A I am.</p> <p>12 Q When did you graduate?</p> <p>13 A 1992.</p> <p>14 Q And what type of degree did you graduate with?</p> <p>15 A Bachelor of arts in political science.</p> <p>16 Q Did you have any formal education after</p> <p>17 graduating in 1992?</p> <p>18 A No.</p> <p>19 Q What was your first job after graduating in</p> <p>20 1992?</p> <p>21 A I've been with the bank since 1988.</p> <p>22 Q When you say the bank, you mean TD Bank or TD</p> <p>23 Banknorth or --</p> <p>24 A Canada Trust. It was Canada Trust in 1988. It</p>	<p style="text-align: center;">Page 19</p> <p>1 here lists TD Bank, a job at TD Bank, June 2006</p> <p>2 to May 2008. I think that must have been TD</p> <p>3 Banknorth, NA, which was a predecessor to TD</p> <p>4 Bank, NA.</p> <p>5 THE WITNESS: That's correct.</p> <p>6 MR. HARVEY: I can't vouch for all the</p> <p>7 other corporate information.</p> <p>8 MR. LALLI: Sure.</p> <p>9 THE WITNESS: So the same thing, if you</p> <p>10 look, TD Canada Trust, it wasn't TD Canada</p> <p>11 Trust until it became TD Canada Trust during</p> <p>12 the integration. It was Canada Trust prior to</p> <p>13 that. I put TD Canada Trust here just because</p> <p>14 that's the common name of it today.</p> <p>15 BY MR. LALLI:</p> <p>16 Q So there may be errors in the actual corporate</p> <p>17 names?</p> <p>18 A The legal title, yes.</p> <p>19 Q But all in all, you've worked for TD since</p> <p>20 1988?</p> <p>21 A Right, yes.</p> <p>22 Q And it has here that your first position was,</p> <p>23 it just says various retail branch positions, TD Canada</p> <p>24 Trust, January '88 to January '93.</p>
<p style="text-align: center;">Page 18</p> <p>1 became TD Canada Trust in the year 2000.</p> <p>2 Q So you've been with the bank since 1988?</p> <p>3 A Correct.</p> <p>4 Q And I understand that you've had a number of</p> <p>5 different roles in the bank since 1988?</p> <p>6 A Yes.</p> <p>7 Q I actually have your Linkedin profile. So I</p> <p>8 think this will make the deposition go quicker.</p> <p>9 (Document marked for identification as</p> <p>10 Chevalier exhibit 2.)</p> <p>11 BY MR. LALLI:</p> <p>12 Q And before I ask questions about it, could you</p> <p>13 just explain for the record what Linkedin is?</p> <p>14 A My understanding of Linkedin is it's a</p> <p>15 centralized repository for people to, A, communicate;</p> <p>16 and B, put up their resumes and credentials. It's more</p> <p>17 of a business networking, I would categorize it.</p> <p>18 Q And what's been marked as Chevalier-2, as far</p> <p>19 as you know, is this your current Linkedin profile?</p> <p>20 A Yes, correct.</p> <p>21 MR. HARVEY: Could I just make a</p> <p>22 clarification? I haven't seen this document</p> <p>23 before, but TD Bank, NA, did not exist until</p> <p>24 May 31, 2008. And so Mr. Chevalier's document</p>	<p style="text-align: center;">Page 20</p> <p>1 A Yes.</p> <p>2 Q What were you doing? What was your job? What</p> <p>3 was your position?</p> <p>4 A So I started in January 1988 as a teller. I</p> <p>5 didn't put all the details because it was 20 years ago.</p> <p>6 Q Sure.</p> <p>7 A It was teller. Cage teller, which in Canada</p> <p>8 means you have a centralized cage where the cash is kept</p> <p>9 in the branch. Proof teller.</p> <p>10 Q What's a proof teller?</p> <p>11 A Sorry. A proof teller, in those days in</p> <p>12 Canada, someone would encode a check. So you did the</p> <p>13 encoding of checks in the stores. And then I went on to</p> <p>14 customer service representative, which is along with</p> <p>15 mortgages. And that was within two different branches.</p> <p>16 Q And it looks like from this Linkedin profile,</p> <p>17 you sort of just moved up the chain.</p> <p>18 A Correct.</p> <p>19 Q Is that fair?</p> <p>20 A Yes.</p> <p>21 Q And you moved up the chain since 1988 until</p> <p>22 your present position, which is what? What's your</p> <p>23 present position there?</p> <p>24 A So right now I am the SVP of day-to-day banking</p>

6 (Pages 21 to 24)

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<p>1 products.</p> <p>2 Q And when did you start at that position?</p> <p>3 A In its current form, in May of 2008. I should</p> <p>4 clarify that I no longer have responsibility for debit</p> <p>5 and gift card. That went to an another individual that</p> <p>6 started in January.</p> <p>7 Q January of 2010?</p> <p>8 A Yes. So he's just started. So we're doing a</p> <p>9 transition.</p> <p>10 Q And who is that person?</p> <p>11 A His name is Sunil Kirplani. And I'm</p> <p>12 transitioning to a new role within the bank.</p> <p>13 Q And what would your new role be?</p> <p>14 A Retail sales and strategy.</p> <p>15 Q As senior vice president of day-to-day banking</p> <p>16 products from May of '08 until sometime around now --</p> <p>17 A In the April time frame. It's not</p> <p>18 officially -- we're shooting for April 12.</p> <p>19 Q What were your roles and responsibilities?</p> <p>20 A So I was accountable for the checking products</p> <p>21 and the P and L on the checking products.</p> <p>22 Q P and L is profit and loss?</p> <p>23 A Profit and loss, yes. And responsible up until</p> <p>24 January for debit card. Same thing, P and L. Those are</p>	<p>1 A Yes.</p> <p>2 Q Prior to September 2007, did you have any roles</p> <p>3 in the gift card program at TD at all?</p> <p>4 A No.</p> <p>5 Q No contact with it at all?</p> <p>6 A I wouldn't say no contact because gift card</p> <p>7 comes out of a checking account. So just by the normal</p> <p>8 course, we end up having some interactions. But not</p> <p>9 really a big part of it. It was run by, for the most</p> <p>10 part, our operations group.</p> <p>11 Q And prior to November 2007, who was the</p> <p>12 operations group?</p> <p>13 A Prior to September 2007?</p> <p>14 Q You took over, September '07, you took over the</p> <p>15 gift card, as I understand it?</p> <p>16 A Yes.</p> <p>17 Q Prior to that, who ran the show for gift cards?</p> <p>18 A It was operations.</p> <p>19 Q And who was in operations?</p> <p>20 A It was Deb Calello, Susan Coward.</p> <p>21 Q Susan who?</p> <p>22 A Coward. She's no longer with the bank.</p> <p>23 Q And Deb Calello, I understand, is still with</p> <p>24 the bank?</p>
Page 22	Page 24
<p>1 the two major accountabilities.</p> <p>2 Q And does debit card include gift cards?</p> <p>3 A It does.</p> <p>4 Q Any other major responsibilities?</p> <p>5 A That would be pretty all-encompassing. So no.</p> <p>6 Q Prior to becoming senior vice president of</p> <p>7 day-to-day banking products, what was your position?</p> <p>8 A So it was senior vice president of money in.</p> <p>9 The only difference between the two is that the prior</p> <p>10 role had savings in addition to checking.</p> <p>11 Q So in your prior role as senior vice president</p> <p>12 of money in, you still had control over the gift card</p> <p>13 program?</p> <p>14 A From September 2007 on. So what happened was,</p> <p>15 when I took over the role in June of 2006 --</p> <p>16 Q When you say the role, you mean the money in</p> <p>17 role?</p> <p>18 A The money in role when I moved to the U.S. I</p> <p>19 had checking and savings. In September 2007, I took</p> <p>20 over debit.</p> <p>21 Q Which includes gift cards?</p> <p>22 A Which includes gift cards.</p> <p>23 Q So from September of 2007 until April 2010,</p> <p>24 you're the head of gift cards, is that fair to say?</p>	<p>1 A She is. She's in operations.</p> <p>2 Q Do you know where Susan went?</p> <p>3 A No.</p> <p>4 Q Do you know when she left?</p> <p>5 A I don't recall. It was sometime in 2009.</p> <p>6 Q Do you know why she left?</p> <p>7 A No.</p> <p>8 Q Now, I'm inferring, and maybe incorrectly, that</p> <p>9 you moved to the U.S. in September of 2007?</p> <p>10 A No, June 2006.</p> <p>11 Q And when you moved to the U.S., you immediately</p> <p>12 became senior vice president of money in?</p> <p>13 A Correct. And just so we're clear, I actually</p> <p>14 moved in August but I was commuting for a couple of</p> <p>15 months.</p> <p>16 Q And prior to your position as senior vice</p> <p>17 president of money in, what was your position?</p> <p>18 A Sorry. You're saying senior vice president of</p> <p>19 money in. We really should call it deposit products.</p> <p>20 Money in is sort of our internal nomenclature. So it's</p> <p>21 deposit products.</p> <p>22 Q I'm sorry.</p> <p>23 A I'm sorry, can you repeat the question?</p> <p>24 Q Prior to becoming senior vice president of</p>

<p style="text-align: center;">Page 25</p> <p>1 deposit products or money in, what was your position?</p> <p>2 A I was the district vice president of</p> <p>3 Scarborough South.</p> <p>4 Q And what's Scarborough South?</p> <p>5 A Scarborough is a district within Toronto,</p> <p>6 Ontario.</p> <p>7 Q What were your duties at that position?</p> <p>8 A I had accountabilities for 20 branches. It</p> <p>9 varied. 20, sometimes it was 19. We were closing</p> <p>10 branches and opening branches. Anywhere from 16 to 20</p> <p>11 branches.</p> <p>12 Q Now, when did you start this position?</p> <p>13 A Started that position in October 2003.</p> <p>14 Q And you finished it in June of '06?</p> <p>15 A Yes.</p> <p>16 Q When you say you oversaw 20 or so branches, did</p> <p>17 you deal with customer complaints at all?</p> <p>18 A Sometimes.</p> <p>19 Q Any customer complaints related to gift cards</p> <p>20 that you can remember?</p> <p>21 A No. Canada doesn't sell gift cards.</p> <p>22 Q So those branches didn't sell gift cards at all</p> <p>23 when you were there?</p> <p>24 A No. The gift card product does not exist or</p>	<p style="text-align: center;">Page 27</p> <p>1 question, you can answer it.</p> <p>2 THE WITNESS: I was accountable for the</p> <p>3 product management of the gift card program.</p> <p>4 BY MR. LALLI:</p> <p>5 Q And what does that mean?</p> <p>6 A That means, once again, I'm accountable for the</p> <p>7 profit and loss of the program itself. I have</p> <p>8 responsibility for the training materials that go out or</p> <p>9 signing off on the training materials that go out and</p> <p>10 signing off on the marketing materials that go out.</p> <p>11 Q So you review all the training materials before</p> <p>12 they go out to the various branches or wherever they go</p> <p>13 to be seen by your employees?</p> <p>14 A I sign off. I make sure that my team has</p> <p>15 reviewed them. Because they're the subject matter</p> <p>16 experts.</p> <p>17 Q You don't personally go through them word by</p> <p>18 word? Your team does that?</p> <p>19 A So I actually do read them, yes. And yes, I</p> <p>20 would go through them word by word.</p> <p>21 Q And you said you also sign off on the</p> <p>22 marketing. The terms?</p> <p>23 A Yes.</p> <p>24 Q What about the packaging of the gift cards, do</p>
<p style="text-align: center;">Page 26</p> <p>1 did not exist in Canada at the time.</p> <p>2 Q So it's fair to say that the first time you had</p> <p>3 any control over the gift card program at TD was</p> <p>4 beginning in September of '07?</p> <p>5 A Yes.</p> <p>6 Q Do you know when TD started their gift card</p> <p>7 program?</p> <p>8 A And by TD, you mean TD Banknorth?</p> <p>9 Q If there's a difference in timing, yes.</p> <p>10 A I'm not totally sure. I think it was a couple</p> <p>11 years before I got there. I'm not sure.</p> <p>12 Q In September of 2007, when you took over the</p> <p>13 gift card program, what did you do? What were your</p> <p>14 day-to-day roles, responsibilities, really anything you</p> <p>15 did regarding the gift card program, on a day-to-day</p> <p>16 basis?</p> <p>17 MR. HARVEY: Object to the form of the</p> <p>18 question.</p> <p>19 BY MR. LALLI:</p> <p>20 Q Do you understand my question?</p> <p>21 A Yes.</p> <p>22 Q You can answer it.</p> <p>23 MR. HARVEY: I've objected to the form</p> <p>24 of the question. If you understand the</p>	<p style="text-align: center;">Page 28</p> <p>1 you sign off on that as well? And when I say packaging,</p> <p>2 I mean the green box that the gift cards come in with</p> <p>3 the elasticized ribbon.</p> <p>4 A I'm one of the sign-offs.</p> <p>5 Q And who else would be a sign-off besides you?</p> <p>6 A We'd have to make sure that operations signed</p> <p>7 off, both operations for card and retail operations, as</p> <p>8 well as compliance.</p> <p>9 Q And who in compliance?</p> <p>10 MR. HARVEY: I'm going to object to the</p> <p>11 time frame. You're asking today? 2007?</p> <p>12 BY MR. LALLI:</p> <p>13 Q We'll start off with when you started. Who</p> <p>14 would have been in compliance?</p> <p>15 A It would be Nina Caulkins.</p> <p>16 Q Can you spell the last name?</p> <p>17 A I'm going to guess. C-A-U-L-K-I-N-S, I</p> <p>18 believe.</p> <p>19 Q And is she still the person in compliance?</p> <p>20 A Yes.</p> <p>21 Q And when you started in September of 2007, who</p> <p>22 at operations would have been the person who signed off?</p> <p>23 A It would have been Susan Coward or Deb Calello.</p> <p>24 Q And has that changed at all?</p>

<p style="text-align: center;">Page 29</p> <p>1 A Yes, Stan Kadelski and Deb Calello. Deb works 2 for Stan, and Stan works for Sunil. 3 Q Did you also sign off on the gift cards 4 themselves, the artwork on the gift cards, the writing 5 on the gift cards? 6 A Can I get clarity on timing again? 7 Q Yes. When you started. 8 A So when I started in September 2007, it was 9 already in place. 10 Q At some point, did a new form of the card come 11 up for review? 12 A Whenever we made a change to the card, I would 13 sign off, yes. 14 Q When was the first time that happened after you 15 started? 16 A We always have a new design every holiday 17 season. So every year prior to the holidays, usually 18 around the October time frame, there's new art that we 19 produce. 20 Q Did you have to approve new art in October of 21 2007? 22 A I don't recall if I approved art in October 23 2007 or not. It might have been already approved. I 24 don't recall.</p>	<p style="text-align: center;">Page 31</p> <p>1 card, there's obviously some text on the back of the 2 card. Is that your understanding? 3 A Yes. 4 Q Do you also sign off on that? 5 A I would, yes. 6 Q Anyone else? 7 A Pretty much the same people that would be 8 involved from the art would sign off on the back of the 9 card. Not so much marketing but certainly compliance. 10 Q So that's Nina? 11 A Yes, operations, retail operations. 12 Q Who actually drafts the disclosures on the back 13 of the card? 14 A Can you clarify your question? 15 Q Who writes the words that are on the back of 16 the card? 17 A The words are already written. So who 18 originally wrote them, I have no idea. That would have 19 been done long before I got there. 20 Q As far as you know, did the disclosures on the 21 back of the card change while you've been there? 22 A They did change. I mean, they've changed in 23 terms of phone numbers. There was a change made, to my 24 understanding, to enhance the disclosures with regard to</p>
<p style="text-align: center;">Page 30</p> <p>1 Q But you approved art in October of 2008? 2 A I would have approved art from that point 3 forward, yes. 4 Q So once a year, sometime in the fall? 5 A That's typically when we do it. I mean, we 6 changed the art at integration because we had to change 7 branding. So there were other times where we changed 8 art as well. 9 Q Now, you're the person who's signing off on it. 10 Does anybody else sign off on the art other than maybe 11 Nina and Stan or Deb or Susan? 12 A So the actual artwork itself, the images on the 13 front, they would have been signed off by marketing as 14 well. 15 Q And when you began, who at marketing would have 16 signed off? 17 A Probably Tom Dick, I believe. 18 Q And did that change at all? 19 A Yes. So Tom has gone back to Canada. John 20 Cunningham heads up our marketing group now. And there 21 would be a number of people. Lise Moncilovich is 22 another one that's involved today in the changing of the 23 art. 24 Q Now, apart from the artwork on the front of the</p>	<p style="text-align: center;">Page 32</p> <p>1 the fees. I believe that change was made by the time I 2 got there in 2007, though. 3 Q Since you've been there, has there been a 4 change to the disclosures? 5 A I don't believe so. There would have been 6 updates relative to the TD Bank name. But I don't 7 believe -- I'm not sure. We would have done tweaks here 8 and there, changes here and there. But I wouldn't be 9 able to give you specifics in terms of the disclosures. 10 Q And when you say we would have done tweaks here 11 and there, who are the "we" who are actually making the 12 changes? 13 A So it depends on where the change originates 14 from. If it's from compliance, if it's something that 15 we think we want to change, or even within the product 16 group, things we want to clarify or enhance. So it 17 could come from either of the two groups. 18 Q What types of things, what types of changes 19 would come from compliance? 20 A If there were things that were mandated to be 21 on the card. So if there were specific pieces of 22 information to be on the card, where the signature goes, 23 all those types of things. Anything that is required in 24 order to make sure we're compliant would come from</p>

<p style="text-align: center;">Page 33</p> <p>1 compliance.</p> <p>2 Q And required by whom or what?</p> <p>3 A By the regulators. And oftentimes our</p> <p>4 compliance folks will make sure that it's more than</p> <p>5 just -- that we're not just following the letter. We're</p> <p>6 a pretty conservative compliance group.</p> <p>7 Q Do you also sign off on the -- we've used the</p> <p>8 word "tri-fold" in previous depositions. I have a copy</p> <p>9 of it just to give you. When you open the gift box,</p> <p>10 there's a tri-fold, "for you," and there's a message you</p> <p>11 can write and a to and a from. Do you also sign off on</p> <p>12 this?</p> <p>13 A Yes.</p> <p>14 Q Do you sign off on the terms and conditions</p> <p>15 that are held within the middle pouch of the tri-fold?</p> <p>16 A Yes.</p> <p>17 Q And who else would sign off on these? When you</p> <p>18 started.</p> <p>19 A Same groups, compliance.</p> <p>20 Q And that's Nina?</p> <p>21 A That's Nina.</p> <p>22 Q Who else?</p> <p>23 A I'm not entirely sure. I believe that retail</p> <p>24 operations would have to sign off as well, Jim Grimmer.</p>	<p style="text-align: center;">Page 35</p> <p>1 A Yes.</p> <p>2 Q Is he still the head of the -- I forget what</p> <p>3 you called it. But the legal department who would work</p> <p>4 on gift cards.</p> <p>5 A No.</p> <p>6 Q Who was that or who did that change to?</p> <p>7 A I believe Catherine Gilmour is pretty much the</p> <p>8 main legal for gift card.</p> <p>9 Q And is Catherine Gilmour currently the main</p> <p>10 legal for gift card?</p> <p>11 A I believe so.</p> <p>12 Q Now, how would any of these topics -- we talked</p> <p>13 about the actual gift cards themselves, the packaging of</p> <p>14 the gift cards. We talked about the training materials,</p> <p>15 the disclosure on the gift cards, the terms and</p> <p>16 conditions. How would they come to you for approval?</p> <p>17 A In various forms.</p> <p>18 Q Let's go through them.</p> <p>19 A Mostly it's e-mail is pretty much how I would</p> <p>20 see it. Or it would be presented to me, like if it's</p> <p>21 talking about artwork, it would be presented to me by</p> <p>22 marketing and we would say yes, we like it or can we</p> <p>23 change this?</p> <p>24 Q When you say presented, do you mean an</p>
<p style="text-align: center;">Page 34</p> <p>1 And operations, Deb and Stan.</p> <p>2 Q Anyone else?</p> <p>3 A Marketing once again. They're the ones that</p> <p>4 actually do the printing and all those types of things,</p> <p>5 the manufacturing.</p> <p>6 Q Is there a legal department that looks at this</p> <p>7 stuff?</p> <p>8 A Yes. So compliance usually works pretty</p> <p>9 closely with legal.</p> <p>10 Q Is it your understanding that any changes that</p> <p>11 legal wanted would come to you through compliance?</p> <p>12 A Yes.</p> <p>13 Q And who was the head of the legal department</p> <p>14 when you began? When I say began, I mean September</p> <p>15 2007.</p> <p>16 A Can you clarify head of? Are you talking</p> <p>17 specifics for the gift card program itself?</p> <p>18 Q Sure, if there is a position.</p> <p>19 A There isn't specifically as to gift card. For</p> <p>20 product in TD Banknorth when I started, it was Einar</p> <p>21 Anderson.</p> <p>22 Q Can you spell that?</p> <p>23 A E-I-N-A-R, A-N-D-E-R-S-O-N.</p> <p>24 Q And is it Mr. Anderson?</p>	<p style="text-align: center;">Page 36</p> <p>1 in-person presentation of the artwork?</p> <p>2 A Yes. So story boards, here's what the</p> <p>3 marketing materials look like.</p> <p>4 Q And is it fair to say that the terms and the</p> <p>5 conditions, the disclosures on the card, the training</p> <p>6 materials, all that stuff would generally be done via</p> <p>7 e-mail?</p> <p>8 A Yes.</p> <p>9 Q And they would come from whatever source they</p> <p>10 came from, from different people?</p> <p>11 A Yes.</p> <p>12 Q And would you then e-mail responses back or how</p> <p>13 did you deal with any concerns or changes you wanted to</p> <p>14 make or questions you had or any type of feedback?</p> <p>15 A It depends on how it was presented. So if it</p> <p>16 was a story board, I would give my feedback right there</p> <p>17 verbally. If it was through e-mail, I would give my</p> <p>18 feedback through e-mail.</p> <p>19 Q And I'm talking from September of 2007 to</p> <p>20 present. Is that the way it's been done?</p> <p>21 A Well, not to present because Sunil is doing it</p> <p>22 now. But up until Sunil came, yes.</p> <p>23 Q Can you guess how many e-mails you've sent and</p> <p>24 received regarding gift cards?</p>

<p style="text-align: center;">Page 37</p> <p>1 MR. HARVEY: Object to the form of the</p> <p>2 question.</p> <p>3 THE WITNESS: No.</p> <p>4 BY MR. LALLI:</p> <p>5 Q Is it more than 50?</p> <p>6 A Can you clarify what type of e-mails you're</p> <p>7 talking about?</p> <p>8 Q Any e-mails regarding changes to any of the</p> <p>9 topics we spoke about.</p> <p>10 MR. HARVEY: I'm going to object again</p> <p>11 because you're asking him to guess.</p> <p>12 BY MR. LALLI:</p> <p>13 Q Is it more than 50?</p> <p>14 A Yes, probably.</p> <p>15 Q Maybe more than a hundred?</p> <p>16 MR. HARVEY: Same objection.</p> <p>17 THE WITNESS: It would be around.</p> <p>18 BY MR. LALLI:</p> <p>19 Q Around a hundred, okay. Do you still have</p> <p>20 these e-mails?</p> <p>21 A Any e-mails that I would have relative to gift</p> <p>22 card that would be directly -- I keep them in a file</p> <p>23 folder that we have submitted.</p> <p>24 Q I didn't quite hear what you said. Did you say</p>	<p style="text-align: center;">Page 39</p> <p>1 we considered all that within the request.</p> <p>2 MR. LALLI: And were produced.</p> <p>3 MR. HARVEY: Were produced, yes.</p> <p>4 Subject to the privilege, which I'm in the</p> <p>5 process of reviewing. I don't know if the</p> <p>6 subject of any of his e-mails were not</p> <p>7 produced. But I'll let you know in the next</p> <p>8 few days.</p> <p>9 BY MR. LALLI:</p> <p>10 Q From the time you started in September of '07,</p> <p>11 did you express any concerns regarding -- and when I say</p> <p>12 express concerns, I mean either through e-mails or</p> <p>13 in-person meetings -- regarding any of the training</p> <p>14 materials that you reviewed?</p> <p>15 A No.</p> <p>16 Q Did you express any concerns regarding any of</p> <p>17 the gift packaging itself? When I say gift packaging, I</p> <p>18 mean the box and the ribbon.</p> <p>19 A Can you clarify concerns?</p> <p>20 Q As I understand it, that model would have been</p> <p>21 presented to you.</p> <p>22 A Yes.</p> <p>23 Q What type of feedback, if at all, would you</p> <p>24 have given regarding the gift card packaging?</p>
<p style="text-align: center;">Page 38</p> <p>1 that you have a special file folder for e-mails relative</p> <p>2 to the gift cards? Is that true?</p> <p>3 A Yes.</p> <p>4 Q And you produced that to your attorney?</p> <p>5 A Yes.</p> <p>6 MR. HARVEY: And we produced that to</p> <p>7 you.</p> <p>8 BY MR. LALLI:</p> <p>9 Q Do you know how many e-mails? You said around</p> <p>10 a hundred. Would you have produced about a hundred</p> <p>11 e-mails to your attorney?</p> <p>12 A I'm not sure of the total amount. I think it</p> <p>13 was more than that, but I'm not sure of the total</p> <p>14 amount.</p> <p>15 MR. HARVEY: Michael, just to be clear,</p> <p>16 as we indicated in our objections to the</p> <p>17 discovery responses, we didn't mention Mr.</p> <p>18 Chevalier, but documents created after the</p> <p>19 filing of this litigation that concerned this</p> <p>20 litigation, we didn't consider those</p> <p>21 responsive. We considered those outside the</p> <p>22 scope of your request. But things in the</p> <p>23 ordinary course of business that he</p> <p>24 communicated back and forth about gift cards,</p>	<p style="text-align: center;">Page 40</p> <p>1 A Pretty much relative to the packaging, that's</p> <p>2 more of a marketing piece. So I have to make sure it</p> <p>3 looks nice and marketing gives it to me. So I wouldn't</p> <p>4 have concerns with the color of the box, the bow, the</p> <p>5 ribbon, all those things. Because that's more of a</p> <p>6 marketing piece than anything else.</p> <p>7 Q I guess a better question to ask is, have you</p> <p>8 ever made any changes to the gift card packaging?</p> <p>9 MR. HARVEY: He himself?</p> <p>10 MR. LALLI: Yes.</p> <p>11 MR. FODERA: Or recommended changes.</p> <p>12 MR. LALLI: That's what I'm getting at.</p> <p>13 THE WITNESS: No.</p> <p>14 BY MR. LALLI:</p> <p>15 Q Have you ever made or recommended any changes</p> <p>16 to the training materials that you saw?</p> <p>17 A I don't recall. I mean, I may have given some</p> <p>18 small feedback here and there. I don't recall what the</p> <p>19 specifics were. Change this, do this formatting.</p> <p>20 Q That would have been done via e-mail?</p> <p>21 A That would have been done via e-mail had I had</p> <p>22 comments to it. I'm not sure if I had comments to the</p> <p>23 training pieces or not.</p> <p>24 Q Where do the training materials come from?</p>

<p style="text-align: center;">Page 41</p> <p>1 A The training materials come from a combination 2 of products, my former team, and with the help of 3 learning and development. But for the most part, it's 4 products and operations, to make sure that the 5 operations pieces are correct. 6 Q And learning and development, what's that? 7 A That's training, the training group. But 8 they're more -- we don't deal with learning and 9 development relative that much to gift card. Training 10 materials, the training guides that go out, come from, 11 really, they're designed by products and operations. 12 Q Have you ever made any or recommended any 13 changes regarding the gift card artwork? 14 A In terms of enhancements, changes in colors, 15 things like that? 16 Q Any changes at all to the actual artwork on the 17 gift card. 18 A No. 19 Q Have you made any or recommended any changes to 20 the disclosures that are on the back of the card? 21 A I don't believe so. 22 Q So everything regarding the disclosures on the 23 back of the card that you saw was good enough, was 24 approved by you?</p>	<p style="text-align: center;">Page 43</p> <p>1 the actual policy itself? 2 A To the extent that I believe we keep most 3 pieces, most major pieces of customer information for 4 seven years. But other than that, I can't give you 5 specifics. 6 Q You don't know how long customer complaints are 7 kept? 8 A No. 9 MR. HARVEY: Just to be clear, I was 10 identifying him more for, I believe that he has 11 some knowledge regarding some of the other 12 things in that same section, B. I assume 13 you'll move into that. 14 MR. LALLI: Yes. 15 BY MR. LALLI: 16 Q How did you find out about this litigation? 17 A If I recall, through our internal lawyer, Leo 18 Doyle, I believe was who informed me. 19 Q And did you receive any instructions to 20 preserve documents? 21 A Yes. 22 Q What were those instructions? 23 A To preserve documents, to preserve any and all 24 documents that would be in relation to gift card.</p>
<p style="text-align: center;">Page 42</p> <p>1 A Yes. By the time it gets to me, it's been 2 through a number of different people. So yes. 3 Q Now, when we started, your attorney said that 4 you may have information regarding the document 5 retention and destruction policies of TD Bank. Is that 6 correct? 7 MR. HARVEY: Just to be clear, it's a 8 longer phrase. I didn't specifically identify 9 that. 10 BY MR. LALLI: 11 Q Do you have knowledge regarding TD Bank's 12 document destruction or retention policies? 13 A Yes. 14 Q What are they? 15 A I can't give you the specifics. I know we have 16 a document retention policy and I know it's governed by 17 our compliance group. 18 Q And that's Nina? 19 A Correct. 20 Q So for questions specific to the document 21 retention and/or destruction policy, Nina would be the 22 person to speak to? 23 A Yes. 24 Q Do you have any specific knowledge regarding</p>	<p style="text-align: center;">Page 44</p> <p>1 Q And how did you go about doing that? 2 A I didn't destroy any of the documents that 3 relate to gift card. 4 Q You didn't destroy any of the documents under 5 your control? 6 A Correct. 7 Q Did you pass along that instruction to anyone 8 else? 9 A Yes. 10 Q To whom? 11 A We determined who would be the people who would 12 have relevant information. And we asked or we passed on 13 the requirement to hold documents to all of those 14 people. 15 Q Do you know who they are? 16 A I don't know if I could give you the exhaustive 17 list, but it was pretty much everyone that we've talked 18 about. So Jim Grimmer, Deb Callelo, Stan Kadelski. We 19 put a list of folks together, which we've already 20 produced. 21 Q So there was a list of people who may have had 22 relevant documents created by someone? 23 A Yes. 24 Q And who created that document?</p>

12 (Pages 45 to 48)

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<p>1 A Who created the document? We met as a group to</p> <p>2 say let's understand who would be on that list. Who</p> <p>3 actually created the e-mail, I don't recall if it was me</p> <p>4 or Leo or who it was.</p> <p>5 Q When you say "we" met, who's "we"?</p> <p>6 A So it would have been the same, so myself,</p> <p>7 Pattie, our counsel, Leo Doyle. And I believe that was</p> <p>8 it for that meeting.</p> <p>9 Q And was that list of people turned over to your</p> <p>10 counsel?</p> <p>11 A Yes.</p> <p>12 Q Was your IT department brought in for this at</p> <p>13 all?</p> <p>14 A Yes.</p> <p>15 Q Who's the head of the IT department?</p> <p>16 A Can you clarify the question? Are you talking</p> <p>17 all of IT?</p> <p>18 Q I guess who at IT was consulted for this</p> <p>19 litigation?</p> <p>20 MR. HARVEY: You mean for purpose of</p> <p>21 the litigation?</p> <p>22 THE WITNESS: I'm not sure. I would</p> <p>23 have dealt with Kevin Rogue, who was my IT</p> <p>24 contact. But I'm not sure who we put on the</p>	<p>1 him not to answer that. If you have something</p> <p>2 specific that you're getting at that's not work</p> <p>3 product, I'd be happy to discuss and explore</p> <p>4 this with you. But I think, in general, this</p> <p>5 is someone who's been communicating with</p> <p>6 counsel in preparation for this litigation, and</p> <p>7 that's work product.</p> <p>8 (Discussion off the record.)</p> <p>9 MR. FODERA: The steps that he took are</p> <p>10 not covered by the work product document</p> <p>11 doctrine. In other words, I went to this, I</p> <p>12 went to here, I went to here. What he put</p> <p>13 together from that is part of the work product.</p> <p>14 MR. HARVEY: No, I think the steps he</p> <p>15 took would be protected by the work product</p> <p>16 doctrine as well.</p> <p>17 BY MR. LALLI:</p> <p>18 Q Your counsel has instructed you not to answer</p> <p>19 what steps you took to identify potentially relevant</p> <p>20 documents for this litigation. Do you understand that?</p> <p>21 A Yes.</p> <p>22 Q Are you going to listen to him or are you going</p> <p>23 to answer the question?</p> <p>24 A I'm going to listen to him.</p>
Page 46	Page 48
<p>1 list.</p> <p>2 BY MR. LALLI:</p> <p>3 Q And where does Kevin work?</p> <p>4 A In Falmouth, Maine.</p> <p>5 Q Were you involved in the identification of</p> <p>6 potentially relevant information?</p> <p>7 MR. HARVEY: Object to the form of the</p> <p>8 question. I think that goes to the</p> <p>9 attorney-client privilege and work product</p> <p>10 document. I'm going to instruct him not to</p> <p>11 answer.</p> <p>12 MR. LALLI: All I want to know is, he</p> <p>13 took steps to identify what documents were</p> <p>14 relevant to this litigation. I don't think</p> <p>15 that's privileged. I don't see how</p> <p>16 attorney-client privilege would even apply to</p> <p>17 that.</p> <p>18 MR. HARVEY: It would be work product</p> <p>19 if it was done in preparation for this</p> <p>20 litigation and particularly but not necessarily</p> <p>21 if it was done at the direction of counsel. So</p> <p>22 his effort to identify any documents for</p> <p>23 purposes of this litigation would be, I</p> <p>24 believe, work product and I'm going to instruct</p>	<p>1 MR. HARVEY: Now, just to be clear, if</p> <p>2 you're talking about in terms of preservation,</p> <p>3 what efforts were made to identify documents</p> <p>4 just solely for purposes of preservation, if he</p> <p>5 did anything, he can tell you about that</p> <p>6 subject. But if you're speaking more broadly</p> <p>7 than that -- that's my point here -- I'm</p> <p>8 willing to work with you to get you the</p> <p>9 information you need, but I think it's</p> <p>10 protected.</p> <p>11 MR. LALLI: We will go to there then.</p> <p>12 BY MR. LALLI:</p> <p>13 Q What steps did you take to identify documents</p> <p>14 that would be preserved?</p> <p>15 A So personally all I did was make sure, I always</p> <p>16 kept a gift card file folder in my e-mail. And I just</p> <p>17 didn't delete anything out of that. So that's all I</p> <p>18 did.</p> <p>19 Q Did you instruct anyone else regarding what</p> <p>20 steps should be taken to preserve certain documents?</p> <p>21 A Once again, we produced an e-mail to all the</p> <p>22 people that we identified, making sure that they knew</p> <p>23 that they were not to destroy or eliminate any</p> <p>24 documents.</p>

13 (Pages 49 to 52)

Page 49	Page 51
<p>1 Q Getting back to the gift card program, I'm</p> <p>2 going to ask you a few names and if you know these</p> <p>3 people and what their titles and roles were, just</p> <p>4 because they came up in some of the documents that were</p> <p>5 produced by counsel. Who's Dan Goldman?</p> <p>6 A Dan Goldman ran the gift card program before I</p> <p>7 got to the bank.</p> <p>8 Q Do you know when he started?</p> <p>9 A I do not.</p> <p>10 Q Who's Dennis DeFlorio?</p> <p>11 A Dennis DeFlorio was a senior executive. I</p> <p>12 don't know what his exact title is or was. During the</p> <p>13 time of our acquisition of Commerce Bank.</p> <p>14 Q Is he no longer with the bank?</p> <p>15 A Correct.</p> <p>16 Q He is no longer with the bank?</p> <p>17 A He is no longer with the bank.</p> <p>18 Q Who's Kevin Barry?</p> <p>19 A Kevin Barry worked in marketing. Commerce</p> <p>20 didn't really have product management. Kevin left after</p> <p>21 I was appointed to the role.</p> <p>22 Q Now, you mentioned Pattie Gallant?</p> <p>23 A Gallant, yes.</p> <p>24 Q What's her title?</p>	<p>1 I'm not sure.</p> <p>2 Q Do you know why TD Bank sells gift cards?</p> <p>3 A Yes. It's a convenience for our customer and</p> <p>4 it's a great way to get our brand in the hands of many,</p> <p>5 many customers. It's a great customer convenience</p> <p>6 factor for us.</p> <p>7 Q Do you also sell them to make money?</p> <p>8 A The gift card is not a big money-making</p> <p>9 program. It's more a brand program. It's about getting</p> <p>10 all those little billboards out, making sure customers</p> <p>11 have them. And it's, once again, about convenience.</p> <p>12 We're all about convenience. And so it's a chance for</p> <p>13 our customers to come in and do their banking and do</p> <p>14 their shopping all at the same time.</p> <p>15 Q You do make money from gift cards, though, is</p> <p>16 that correct?</p> <p>17 A Yes.</p> <p>18 Q Do you know how much money yearly?</p> <p>19 A No, I don't know the exact number. It's a</p> <p>20 small piece of what I worry about. It's a small part of</p> <p>21 the business from a revenue perspective. Big for brand</p> <p>22 but small for revenue.</p> <p>23 Q Who would know how much money TD Bank makes</p> <p>24 from the sale of gift cards?</p>
Page 50	Page 52
<p>1 A She's product manager, debit card.</p> <p>2 Q And she reports to you?</p> <p>3 A She did. She reports to Sunil Kirplani now.</p> <p>4 Q Who's Beth Hogan?</p> <p>5 A Beth Hogan is marketing and planning. She</p> <p>6 works in marketing. She was the planner at the time for</p> <p>7 gift card.</p> <p>8 Q And what type of responsibility did she have</p> <p>9 with gift card?</p> <p>10 A So marketing and planning is responsible for</p> <p>11 planning all the marketing activities around the</p> <p>12 product.</p> <p>13 Q Who's Karen Mayo?</p> <p>14 A Karen works for Pattie in product management.</p> <p>15 Q Robert Harpool?</p> <p>16 A I know the name. I don't know exactly what he</p> <p>17 does.</p> <p>18 Q Who's Kevin Cane?</p> <p>19 A Kevin Cane also works in marketing. He's the</p> <p>20 graphics guy. He's the guy that comes up with the</p> <p>21 artwork.</p> <p>22 Q And there's a name I don't know how to</p> <p>23 pronounce. It's K-A-I-A and the last name is Vaenis.</p> <p>24 A I don't know. I think she's in marketing but</p>	<p>1 A We'd have to find out from our finance guys.</p> <p>2 Q And if you wanted to know, say, today, who</p> <p>3 would you ask?</p> <p>4 A I would ask, well, today I'd ask Sunil or his</p> <p>5 finance representatives.</p> <p>6 Q And what about when you started, who would you</p> <p>7 have asked?</p> <p>8 A What about when who started?</p> <p>9 Q I'm sorry, in September of 2007.</p> <p>10 A If I wanted to know what the revenue was for</p> <p>11 gift card?</p> <p>12 Q Yes.</p> <p>13 A Finance.</p> <p>14 Q And who was the head of finance back then?</p> <p>15 A Elysha Owens was the debit finance person but I</p> <p>16 don't believe she was the finance person when I first</p> <p>17 started. I don't recall who was doing it when I first</p> <p>18 got there.</p> <p>19 Q And do you understand the records regarding the</p> <p>20 sale of gift cards are kept by TD?</p> <p>21 A Can you clarify the question?</p> <p>22 Q Do you know if records are kept regarding</p> <p>23 revenue created by the sale of gift cards, if records</p> <p>24 regarding that are kept by TD?</p>

<p style="text-align: center;">Page 53</p> <p>1 A Records are kept, yes.</p> <p>2 Q And are they kept by finance?</p> <p>3 A Yes. I mean, finance keeps GL entries and all</p> <p>4 those types of things, yes.</p> <p>5 Q Do you know what the cost of maintaining the</p> <p>6 gift cards is that the bank incurs?</p> <p>7 A No, not specifically, no.</p> <p>8 Q Do you know generally?</p> <p>9 A No. I know there is a cost but I don't know</p> <p>10 exactly what it is because, once again, I would look at</p> <p>11 one line on this product line and it would be sort of a</p> <p>12 net number. And that cost, it wouldn't even include</p> <p>13 what it costs to keep our branches running and the</p> <p>14 person's wage to sell the card.</p> <p>15 Q Do you know who would know what the cost of</p> <p>16 maintaining the cards is?</p> <p>17 A Operations can tell you the cost of the</p> <p>18 plastic, the cost of the box. They can tell you</p> <p>19 specifically. I don't think there would be anyone that</p> <p>20 could say when you say all things relative to wages and</p> <p>21 all that stuff. I mean, it would be way more than just</p> <p>22 the cost of the plastic and the cost of the box. But</p> <p>23 operations would be the ones to give you the specific</p> <p>24 costs.</p>	<p style="text-align: center;">Page 55</p> <p>1 Q And you understand that fees are assessed on TD</p> <p>2 Bank gift cards?</p> <p>3 A Yes.</p> <p>4 Q Are fees assessed on cash?</p> <p>5 A No.</p> <p>6 MR. HARVEY: Object to the form of the</p> <p>7 question.</p> <p>8 THE WITNESS: I don't understand what</p> <p>9 you mean.</p> <p>10 BY MR. LALLI:</p> <p>11 Q What I'm getting at, I just want to know, you</p> <p>12 talked about the benefit to the purchaser of the card,</p> <p>13 the giver of the card. It's a gift. It's in a box.</p> <p>14 What benefit does the recipient receive?</p> <p>15 A I still don't understand the question. I mean,</p> <p>16 they get a card. They get a card that they can use</p> <p>17 anywhere.</p> <p>18 Q And you don't know what the numbers are in</p> <p>19 terms of how many gift cards you've sold? Or do you?</p> <p>20 A Not specifically, no.</p> <p>21 Q Generally?</p> <p>22 A Generally we sell most of our gift cards before</p> <p>23 the holidays. And so I think it's, collectively, it's</p> <p>24 around a million cards a year, with the majority of them</p>
<p style="text-align: center;">Page 54</p> <p>1 Q But it's your understanding that you bring more</p> <p>2 in, more money in than you pay out in costs in the gift</p> <p>3 card program?</p> <p>4 A Yes.</p> <p>5 Q What benefit to the consumer would gift cards</p> <p>6 have over, say, any retail store gift card?</p> <p>7 A The benefit to the consumer?</p> <p>8 Q Yes.</p> <p>9 A They can use that card anywhere they want. So</p> <p>10 anywhere that Visa is accepted is where they can use</p> <p>11 that card. In a closed loop or, as you refer to it, in</p> <p>12 a merchant, you can typically only use that card with</p> <p>13 that merchant. If that merchant goes out of business,</p> <p>14 you're out. So the Visa gift card is a great</p> <p>15 convenience for anywhere you want to go.</p> <p>16 Q What benefit does the consumer get from a TD</p> <p>17 Bank gift card over getting cash?</p> <p>18 A Well, that's speculative. But I'd say, as a TD</p> <p>19 customer, I'd rather give a gift card, for me</p> <p>20 personally, I'd rather give a gift card than give</p> <p>21 someone cash. The gift card comes in the box. It's a</p> <p>22 present. Whereas cash is just sort of in an envelope</p> <p>23 and there you go. So it's much more aesthetic. It's a</p> <p>24 gift.</p>	<p style="text-align: center;">Page 56</p> <p>1 being sold around the holidays.</p> <p>2 Q And that's a million cards a year for how many</p> <p>3 years?</p> <p>4 A That would be, I can tell you, since we</p> <p>5 combined our organizations. So that would be this year</p> <p>6 and last year.</p> <p>7 Q And what are you basing that million cards on?</p> <p>8 A What am I basing it on?</p> <p>9 Q Yes. What are you basing -- I guess it's an</p> <p>10 estimation?</p> <p>11 A Yes.</p> <p>12 Q What are you basing it on?</p> <p>13 A So, I mean, we know how many gift cards we sell</p> <p>14 during the holidays. We track that daily, how many gift</p> <p>15 cards we sell during the holidays. And then we sell a</p> <p>16 very small amount for the year. So once again, call it</p> <p>17 850,000 this past holiday season and we know we sell a</p> <p>18 little bit of gift cards -- not a little bit but 150,000</p> <p>19 or so -- and that's just a ballpark -- during the summer</p> <p>20 months, like with moms, dads and grads, as we call it.</p> <p>21 Q And who would know specifically how many cards</p> <p>22 are sold?</p> <p>23 A Operations would be probably the best one.</p> <p>24 Sunil would as well.</p>

15 (Pages 57 to 60)

<p style="text-align: center;">Page 57</p> <p>1 Q Have you ever purchased a TD Bank gift card?</p> <p>2 A I have not because all of my family is in</p> <p>3 Canada and gift cards aren't a big thing in Canada. So</p> <p>4 I haven't.</p> <p>5 MR. LALLI: Do you want to take a</p> <p>6 break?</p> <p>7 MR. HARVEY: Sure.</p> <p>8 (Brief recess.)</p> <p>9 ---</p> <p>10 BY MR. LALLI:</p> <p>11 Q Just to clear up a few things that we've spoken</p> <p>12 about, in your conversation with Mamie about the</p> <p>13 complaints, you testified that if it was about fees, we</p> <p>14 generally make the customer whole. Do you remember</p> <p>15 that?</p> <p>16 A Yes.</p> <p>17 Q What does that mean?</p> <p>18 A So we will reimburse the customer their fees.</p> <p>19 That's really what it means.</p> <p>20 Q Now, these people who were complaining, do you</p> <p>21 know if they were recipients of the gift cards or</p> <p>22 purchasers of the gift cards?</p> <p>23 A I don't know.</p> <p>24 Q You don't have any specifics?</p>	<p style="text-align: center;">Page 59</p> <p>1 assume you're going to ask many more. I'm</p> <p>2 going to invoke the terms of our</p> <p>3 confidentiality agreement with respect to this</p> <p>4 deposition as with respect to the deposition of</p> <p>5 Jim Grimmer.</p> <p>6 MR. LALLI: Okay.</p> <p>7 MR. HARVEY: Thank you.</p> <p>8 BY MR. LALLI:</p> <p>9 Q I was asking you about any changes you may have</p> <p>10 made to the disclosures on the back of the card. And I</p> <p>11 think your answer was something to the effect of by the</p> <p>12 time it gets to me, it's already gone through a whole</p> <p>13 bunch of pieces, or something to that effect.</p> <p>14 A Yes.</p> <p>15 Q What would it have gone through, what specific</p> <p>16 departments would they have come through before it got</p> <p>17 to you?</p> <p>18 MR. HARVEY: I'm going to object to the</p> <p>19 form of the question. I'm not sure that it's</p> <p>20 been established there were any changes made to</p> <p>21 the gift cards during his time.</p> <p>22 MR. LALLI: That's not my question.</p> <p>23 MR. HARVEY: I just object to the form</p> <p>24 of the question.</p>
<p style="text-align: center;">Page 58</p> <p>1 A No.</p> <p>2 Q You said your new position is retail sales and</p> <p>3 strategy?</p> <p>4 A Retail sales and strategy.</p> <p>5 Q What does that mean?</p> <p>6 A In my new role, I'm going to be accountable for</p> <p>7 the sales metrics that we use to measure the success of</p> <p>8 sales at the employee and store level, the campaigns</p> <p>9 that we run internally, to make sure that we're selling</p> <p>10 products and getting the employees really engaged, how</p> <p>11 we measure and track both the stores, the regions, the</p> <p>12 individuals, all of that whole piece. That's pretty</p> <p>13 much the crux of it.</p> <p>14 Q And the gift card sales will be a part of that,</p> <p>15 that you'll be tracking?</p> <p>16 A Yes. It's hard to say because it won't be a</p> <p>17 big part of my new role. Most of the gift card</p> <p>18 tracking, the sales tracking, comes from operations and</p> <p>19 products. And the only time we ever really track it is</p> <p>20 during the holidays when we really are counting how many</p> <p>21 we're selling because that's the big time of year.</p> <p>22 MR. HARVEY: Mike, you've asked the</p> <p>23 witness several questions that relate to</p> <p>24 internal business processes at TD Bank. I</p>	<p style="text-align: center;">Page 60</p> <p>1 BY MR. LALLI:</p> <p>2 Q Do you understand what I'm asking you?</p> <p>3 A I think you need to clarify what type of</p> <p>4 changes you're talking about.</p> <p>5 Q I'm not talking about changes. What I'm saying</p> <p>6 is, when the disclosures reach you for you to sign off</p> <p>7 on them, you testified that they've already gone through</p> <p>8 a number of different departments or they've already</p> <p>9 been seen by a number of different groups or something</p> <p>10 to that effect. Do you remember testifying to that?</p> <p>11 A Yes.</p> <p>12 MR. FODERA: By it time it gets back to</p> <p>13 me, it has been through a number of pieces is</p> <p>14 what you said.</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MR. LALLI:</p> <p>17 Q What are those pieces, as you said it?</p> <p>18 MR. HARVEY: And I'm just going to</p> <p>19 object to the form, and I'll tell you the</p> <p>20 basis. And that is, I think, I don't know if</p> <p>21 he said this, but I think it only comes to him</p> <p>22 when there are changes made to it. In other</p> <p>23 words, it doesn't just come to him and they say</p> <p>24 here it is, approve it, every year. I think he</p>

16 (Pages 61 to 64)

Page 61	Page 63
<p>1 said when there is a change, it comes his way.</p> <p>2 You can explore that but I just wanted the</p> <p>3 record to be clear.</p> <p>4 BY MR. LALLI:</p> <p>5 Q Do you understand my question?</p> <p>6 A Can you rephrase it or repeat it?</p> <p>7 Q You testified that before it gets to you, it</p> <p>8 goes through a number of different pieces. I understood</p> <p>9 that to mean a number of different departments looking</p> <p>10 at it.</p> <p>11 A I understand that.</p> <p>12 Q Is my assumption correct?</p> <p>13 A Correct.</p> <p>14 Q And who are those departments?</p> <p>15 A I think we had identified them, which was</p> <p>16 compliance, operations, marketing would be the three</p> <p>17 main ones.</p> <p>18 Q And prior to the disclosures going to</p> <p>19 compliance, is it your understanding they would have</p> <p>20 gone through legal or come from legal?</p> <p>21 A Yes.</p> <p>22 Q And going on what your counsel just said, do</p> <p>23 you only approve changes to the disclosures or do you</p> <p>24 approve them each year when the new marketing push comes</p>	<p>1 Q So other than the change of the dollar amount</p> <p>2 and the frequency of the fees and the legal entity name</p> <p>3 change, any other changes on the disclosures?</p> <p>4 A Not that I recall.</p> <p>5 Q And you may have answered this, but who's Leo</p> <p>6 Doyle?</p> <p>7 A He's an internal lawyer to TD Bank.</p> <p>8 Q You testified that the customer complaint</p> <p>9 letters are kept?</p> <p>10 A Yes.</p> <p>11 Q Where are they kept?</p> <p>12 A So in the chairman -- I keep changing the name.</p> <p>13 I apologize. In Mamie's group, the chairman service</p> <p>14 center.</p> <p>15 Q So Mamie has access to them?</p> <p>16 A Yes.</p> <p>17 Q Where is she located?</p> <p>18 A In Mt. Laurel, New Jersey, I believe.</p> <p>19 Q Why are there fees on your gift cards?</p> <p>20 A Because the program costs to run.</p> <p>21 Q And what fees -- I guess we'll start in</p> <p>22 September of '07 when you took over the gift card</p> <p>23 program. What fees were being assessed in September of</p> <p>24 '07?</p>
Page 62	Page 64
<p>1 for the holidays?</p> <p>2 A Just when it's changed.</p> <p>3 Q And how many times would you say you've</p> <p>4 reviewed a change in the disclosures on the card?</p> <p>5 A I couldn't answer that. Not many.</p> <p>6 Q Less than 20?</p> <p>7 A Yes.</p> <p>8 Q Less than 10?</p> <p>9 A Yes.</p> <p>10 Q Less than five?</p> <p>11 A I'm not sure.</p> <p>12 Q Do you remember any of the changes that were</p> <p>13 made?</p> <p>14 A To what?</p> <p>15 Q To the disclosures.</p> <p>16 A So pretty much as we were making changes, we</p> <p>17 made changes to the fees themselves. Those were pretty</p> <p>18 much the main changes that we made between Banknorth and</p> <p>19 Commerce. And then we had the legal entity changes we</p> <p>20 had to make as well after the legal date of the TD Bank</p> <p>21 acquisition of Commerce.</p> <p>22 Q Any other changes other than the -- now, when</p> <p>23 you say the fees, do you mean the amounts of fees?</p> <p>24 A Yes. Dollar amount and frequency.</p>	<p>1 A So in TD Banknorth, is that what you're --</p> <p>2 Q Sure.</p> <p>3 A In TD Banknorth, we charged a \$3.50 fee to</p> <p>4 purchase the card. And then we waived that fee for six</p> <p>5 months. And then at the end of six months, the \$3.50</p> <p>6 would kick in every month subsequent while there was a</p> <p>7 balance on the card.</p> <p>8 Q So it was \$3.50 to purchase the card?</p> <p>9 A Yes.</p> <p>10 Q Up front?</p> <p>11 A Yes. So we would say \$3.50 a month. You pay</p> <p>12 for it in the first month and then we'll waive it for</p> <p>13 six months.</p> <p>14 Q After six months, the \$3.50 would be assessed</p> <p>15 on a monthly basis until the balance of the card ran</p> <p>16 out, is that correct?</p> <p>17 A That's correct.</p> <p>18 Q And those fees would start being assessed prior</p> <p>19 to the good-through date that's on the front of the</p> <p>20 card, isn't that true?</p> <p>21 A They could, yes.</p> <p>22 Q Do you know generally how far ahead from when a</p> <p>23 card is made, how far ahead the expiration date is</p> <p>24 placed?</p>

<p style="text-align: center;">Page 65</p> <p>1 A The good-through date is that what you're</p> <p>2 asking about?</p> <p>3 Q Yes.</p> <p>4 A Typically two years.</p> <p>5 Q So when you say the fees could start being</p> <p>6 assessed prior to the good-through date, isn't it true</p> <p>7 that they're always going to be assessed, if they're</p> <p>8 going to be assessed, prior to the good-through date?</p> <p>9 A If they're going to be assessed. So if you use</p> <p>10 the entire balance of that card, you're not going to be</p> <p>11 assessed any fees.</p> <p>12 Q Sure. But if there's any balance left after</p> <p>13 that six months, fees will be assessed onto it until the</p> <p>14 card balance is run out either through other purchases</p> <p>15 or through fees?</p> <p>16 A Yes.</p> <p>17 Q Did those fees at all change?</p> <p>18 A Yes.</p> <p>19 Q When and how?</p> <p>20 A So we did a couple of things. In the summer of</p> <p>21 2008, for the moms, dads and grads campaign, as we call</p> <p>22 it, we eliminated the \$3.50 up-front fee just for that</p> <p>23 period. I believe it was June to maybe the end of July,</p> <p>24 maybe May to July. I'm not sure of the exact dates.</p>	<p style="text-align: center;">Page 67</p> <p>1 reason for that is Commerce was a spectacular brand</p> <p>2 bank. They opened more accounts than any other bank</p> <p>3 pretty much in the United States. And they had more</p> <p>4 customers than Banknorth did. So for those reasons, it</p> <p>5 was quite an obvious decision for us to say let's go</p> <p>6 with the Commerce pricing and product set.</p> <p>7 Q And who made that decision?</p> <p>8 A It was made by a collection of people. I mean,</p> <p>9 ultimately it was made by the executives of the bank,</p> <p>10 the very top of the house, from the president. It was</p> <p>11 presented and decided on by a number of people.</p> <p>12 Q Did you have any say?</p> <p>13 A Yes.</p> <p>14 Q And were you in favor or against going to the</p> <p>15 Commerce fee structure?</p> <p>16 A I was in favor.</p> <p>17 Q For the reasons you've outlined?</p> <p>18 A Correct.</p> <p>19 Q Can you tell me, I guess, the step-by-step</p> <p>20 process when a customer walks into a bank looking to</p> <p>21 purchase a gift card, how they go about doing it and</p> <p>22 what happens?</p> <p>23 A No, I can't tell you the steps that they take.</p> <p>24 I mean, that's more of a retail operations question. I</p>
<p style="text-align: center;">Page 66</p> <p>1 But we eliminated that fee in the Banknorth environment</p> <p>2 for the moms, dads and grads campaign, the up-front fee.</p> <p>3 Q Any other changes?</p> <p>4 A Yes. In September of 2008, we eliminated the</p> <p>5 fee altogether.</p> <p>6 Q The up-front fee?</p> <p>7 A The up-front fee. And we moved the \$3.50 to</p> <p>8 \$2.50 after one year. And we did that to align with the</p> <p>9 legacy Commerce fee structure.</p> <p>10 Q Was there any reason the up-front fee was</p> <p>11 waived during that moms, dads and grads? Was it just a</p> <p>12 promotion?</p> <p>13 A Yes.</p> <p>14 Q And when the Commerce, I guess, merger took</p> <p>15 place, it's my understanding that TD Bank, you sort of</p> <p>16 changed, you adopted Commerce's legacy, Commerce's fee</p> <p>17 structure? Is that your understanding?</p> <p>18 A That was correct.</p> <p>19 Q Why?</p> <p>20 A For a couple reasons. When you're doing an</p> <p>21 integration, you pick one product set, one fee</p> <p>22 structure, and you go with it. You never create a</p> <p>23 hybrid. So with that as the guiding principle, we</p> <p>24 picked the Commerce legacy set and fee structure. The</p>	<p style="text-align: center;">Page 68</p> <p>1 know a customer walks into a store, asks for a card, and</p> <p>2 they walk out with a card. And I also can reference</p> <p>3 certainly what we mention in the training.</p> <p>4 Q That's what I'm getting at. You said you okay</p> <p>5 training materials.</p> <p>6 A Yes, okay.</p> <p>7 Q So what do you train your customer service</p> <p>8 representatives or tellers to do? What steps do they</p> <p>9 take?</p> <p>10 A Sure. So when the customer asks for a gift</p> <p>11 card, the store staff acquire the gift card. I think</p> <p>12 they get it out of the vault. They put the gift card</p> <p>13 onto the system. They put the gift card into the box</p> <p>14 and into the sleeve that goes in the box. They give the</p> <p>15 gift card to the customer. They are instructed to tell</p> <p>16 the customer or show the customer the terms and</p> <p>17 conditions. And we also instruct them to tell the</p> <p>18 customer to tell the recipient of the card of the terms</p> <p>19 and conditions, to share the terms and conditions with</p> <p>20 them as well. And we've even gone so far as to say tell</p> <p>21 them about the fee.</p> <p>22 Q When you say the fee, what do you mean by that?</p> <p>23 A The fee that's associated with the card.</p> <p>24 Q Any other instructions you give your employees?</p>

18 (Pages 69 to 72)

Page 69	Page 71
<p>1 A There's a number of different instructions in</p> <p>2 the training. I can't give you the specific ones.</p> <p>3 Q Any other instructions relative to fees and</p> <p>4 informing the purchaser about the fees?</p> <p>5 A We tell them to inform the purchaser about the</p> <p>6 fees. We also ask them to -- we encourage everyone to</p> <p>7 register the card online. We encourage them -- it's</p> <p>8 right on the card, too -- register the card online. We</p> <p>9 tell them about the 1-800 number. So all of those</p> <p>10 things are instructed.</p> <p>11 Q Do you know how the gift cards are presented to</p> <p>12 the card purchaser?</p> <p>13 A I don't understand the question.</p> <p>14 Q Do you know what is given to the purchaser of</p> <p>15 the gift card by the teller, how it's presented?</p> <p>16 A Not specifically. I mean, the training pretty</p> <p>17 much says, with the customer, you have the box, you put</p> <p>18 the card in the sleeve, the sleeve in the box, and you</p> <p>19 give it to the customer, all with the customer there.</p> <p>20 Q So it's your understanding that you at least</p> <p>21 train your employees to give the purchasers of gift</p> <p>22 cards the gift card that's already wrapped or enclosed</p> <p>23 in the box?</p> <p>24 A No. I mean, they do it right then and there</p>	<p>1 say, here, look, here's the piece of paper with the</p> <p>2 terms and conditions?</p> <p>3 A I can't say what the individual will do. Some</p> <p>4 might.</p> <p>5 Q What are they trained to do?</p> <p>6 A They're trained to tell the customer of the</p> <p>7 terms and conditions. How they choose to do that, I</p> <p>8 don't think we give specific actions they should take.</p> <p>9 Q Is it important that purchasers are fully</p> <p>10 informed of the terms and conditions of the card?</p> <p>11 A Yes.</p> <p>12 Q And why so?</p> <p>13 A Because those are the terms and conditions.</p> <p>14 That gives you everything you want to know about the</p> <p>15 card, how to replace the card, the cost of the card and</p> <p>16 all those things.</p> <p>17 Q Is it important that the recipient is fully</p> <p>18 informed of the terms and conditions of the card?</p> <p>19 A Yes.</p> <p>20 Q And for the same reasons or different reasons?</p> <p>21 A Same reasons.</p> <p>22 Q Do you think that information about when or how</p> <p>23 to use the card should be affixed to the card itself,</p> <p>24 either on a sticker or with tape?</p>
Page 70	Page 72
<p>1 with the customer. The customer walks out, if they</p> <p>2 choose to, with it done as a gift.</p> <p>3 Q When you say it done, you mean the card in the</p> <p>4 box already?</p> <p>5 A Correct.</p> <p>6 Q And do you understand there's an elasticized</p> <p>7 ribbon that closes the box?</p> <p>8 A Yes.</p> <p>9 Q Are the terms and conditions explained to the</p> <p>10 purchaser?</p> <p>11 A Do they actually read them to them? Is that</p> <p>12 your question?</p> <p>13 Q Okay, that's a start. Do they read the terms</p> <p>14 and conditions?</p> <p>15 A No.</p> <p>16 Q Do they summarize the terms and conditions?</p> <p>17 A They would tell the customer, they would show</p> <p>18 the customer this is the terms and conditions. They're</p> <p>19 instructed to show the customer the terms and</p> <p>20 conditions.</p> <p>21 Q So you train your employees to inform the</p> <p>22 customer that terms and conditions exist?</p> <p>23 A Correct.</p> <p>24 Q And the representative will show and physically</p>	<p>1 MR. HARVEY: Object to the form of the</p> <p>2 question.</p> <p>3 THE WITNESS: I need clarity. I don't</p> <p>4 understand what you mean.</p> <p>5 BY MR. LALLI:</p> <p>6 Q What I'm getting at is, when does this -- let's</p> <p>7 call it a monthly maintenance fee. Is that fair?</p> <p>8 A Yes.</p> <p>9 Q Is there another name for it?</p> <p>10 A It's a monthly fee. We call it all kinds of</p> <p>11 things. Breakage.</p> <p>12 Q Breakage fee?</p> <p>13 A That's an internal thing. We don't call it</p> <p>14 breakage with the customer. It's all the same thing.</p> <p>15 Q My understanding is the breakage fee kicks in</p> <p>16 after 13 months.</p> <p>17 A First day of the first month after the 365th</p> <p>18 day after the card is issued.</p> <p>19 Q And the date the card is issued, what does that</p> <p>20 mean?</p> <p>21 A It's the date that the customer comes in, the</p> <p>22 purchaser comes in and loads the card.</p> <p>23 Q That issue date is not included on the card?</p> <p>24 A No.</p>

19 (Pages 73 to 76)

Page 73	Page 75
<p>1 Q Does it say the issue date?</p> <p>2 A No.</p> <p>3 Q Are there any terms that are packaged with the</p> <p>4 card that are designed to reach the recipient that state</p> <p>5 the issue date?</p> <p>6 A No. There are materials that are designed to</p> <p>7 allow the customer to find out the balance on the card,</p> <p>8 the issue date of the card. And that is through the</p> <p>9 1-800 phone number.</p> <p>10 Q That's what I'm getting at. Do you think</p> <p>11 information about when to use the card, the issue date,</p> <p>12 do you think the issue date should be affixed on a</p> <p>13 sticker on the card?</p> <p>14 MR. HARVEY: Object to the form of the</p> <p>15 question.</p> <p>16 BY MR. LALLI:</p> <p>17 Q Do you understand my question?</p> <p>18 A Yes. So my answer is no.</p> <p>19 Q And why not?</p> <p>20 MR. HARVEY: Same objection.</p> <p>21 THE WITNESS: Am I answering?</p> <p>22 MR. HARVEY: Yes.</p> <p>23 THE WITNESS: So, first of all, putting</p> <p>24 it on a sticker adds an extra step, which is --</p>	<p>1 Q So it's your testimony that it's more</p> <p>2 convenient for them, if they want to know the issue date</p> <p>3 of the card, to call the number than it would be to have</p> <p>4 a little sticker on the card with the issue date?</p> <p>5 MR. HARVEY: Object to the form of the</p> <p>6 question.</p> <p>7 THE WITNESS: Am I answering?</p> <p>8 MR. HARVEY: Go ahead, you can answer.</p> <p>9 THE WITNESS: What's more convenient is</p> <p>10 having the customer register that card. That's</p> <p>11 the ultimate convenience for the customer. We</p> <p>12 want them to go online and register the card.</p> <p>13 We want them to do that for all kinds of</p> <p>14 reasons, lost, stolen, replaced. So what's</p> <p>15 more convenient for the customer is have them</p> <p>16 go on and register that card. It's better for</p> <p>17 them. So I think putting the sticker on the</p> <p>18 card is not going to support what is the</p> <p>19 ultimate convenience and that is registering</p> <p>20 that card.</p> <p>21 BY MR. LALLI:</p> <p>22 Q Isn't it easier for the customer, if they want</p> <p>23 to know the issue date, wouldn't it be easier for them</p> <p>24 to just look on the card than go online or call a phone</p>
Page 74	Page 76
<p>1 it just adds an extra step. It makes the</p> <p>2 process more complex. It may not even look</p> <p>3 that good. If you're going to have somebody</p> <p>4 put a sticker on, write a date on, it's not</p> <p>5 going to make the card look good. It takes</p> <p>6 away from the gift.</p> <p>7 The third thing is some customers may</p> <p>8 not want that on their card. Some customers</p> <p>9 may not want to know when they purchased the</p> <p>10 card. If I know I've got four gifts coming up</p> <p>11 in the next month, I personally would not want</p> <p>12 that on my card. I would want to tell the</p> <p>13 customer, you could go online. But I don't</p> <p>14 think I'd want it on the card.</p> <p>15 BY MR. LALLI:</p> <p>16 Q Don't you think it's more convenient for the</p> <p>17 recipient to have the issue date on the card?</p> <p>18 MR. HARVEY: Object to the form of the</p> <p>19 question.</p> <p>20 THE WITNESS: No, because, once again,</p> <p>21 they have lots of means of finding out what</p> <p>22 that issue date is, what the balance is, all of</p> <p>23 those things.</p> <p>24 BY MR. LALLI:</p>	<p>1 number?</p> <p>2 MR. HARVEY: Object to the form of the</p> <p>3 question.</p> <p>4 THE WITNESS: That's speculation to me.</p> <p>5 I mean, is it easier for them? What's easier</p> <p>6 for them is registering that card. If they're</p> <p>7 going to go out and purchase right away, it</p> <p>8 doesn't matter to them at all what the issue</p> <p>9 date of the card is.</p> <p>10 BY MR. LALLI:</p> <p>11 Q So it's your testimony that it's not easier for</p> <p>12 them to have the issue date directly on the card? It's</p> <p>13 easier for them to look on the back, see what the number</p> <p>14 is or Web site is, go to their computer, type in the Web</p> <p>15 site address, type in their card number, type in the</p> <p>16 three-digit number on the back, whatever other</p> <p>17 registration information is needed, and then find out</p> <p>18 the issue date?</p> <p>19 MR. HARVEY: Object to the form of the</p> <p>20 question.</p> <p>21 THE WITNESS: It's my testimony that it</p> <p>22 is more convenient for the customer to register</p> <p>23 their card.</p> <p>24 BY MR. LALLI:</p>

20 (Pages 77 to 80)

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1 Q Would it be easier, if I wanted to provide you
2 some information on this sheet of paper right now, would
3 it be easier for me to write the information down and
4 hand it to you or would it be easier for you if I wrote
5 down that you can go to some Web site address to get the
6 information? What would be easier for you?

7 MR. HARVEY: Object to the form of the
8 question. You can answer.

9 THE WITNESS: Once again, it depends on
10 the function of that piece of paper. If that's
11 a valuable piece of paper that I'm worried
12 about losing, then I would want to do the Web
13 thing. If it is just a piece of paper, yes.
14 But we're not talking about a piece of paper,
15 we're talking about a gift card. I want the
16 customer to register that gift card. I want
17 the customer to understand the terms and
18 conditions of that gift card.

19 BY MR. LALLI:

20 Q If you want them to understand the terms and
21 conditions of the gift card, and I'm going to go back to
22 it, wouldn't it be easier if they were given the issue
23 date either on the card itself -- and I keep going to
24 the sticker, but it can be done in a number of ways. It

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1 can be done with a receipt along with the packaging,
2 something to that effect, so that the issue date is
3 provided to the recipient?

4 MR. HARVEY: Object to the form of the
5 question.

6 THE WITNESS: Once again, I want the
7 customer to be able to register that card. So
8 that's what's more convenient for the customer.
9 If that customer loses their card or they want
10 to find out information about that card, if I
11 lose my card and then I go and I haven't
12 registered it, it's much easier for me had I
13 registered it. That's what's easier for me.

14 BY MR. LALLI:

15 Q Is it your understanding that all customers
16 will register the card?

17 A No. We encourage them to do so, but not
18 everyone does.

19 Q And the fees kick in, the clock starts for the
20 fees at the issue date?

21 A Correct.

22 Q Not the date the card is registered?

23 A Sorry. What do you mean by registered?

24 Online?

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1 Q Sure, like we've been talking about.

2 A No, it's the issue date, correct.

3 Q Are you aware of what your competitors do
4 regarding gift cards?

5 A We have few competitors. Most banks aren't
6 even selling gift cards anymore. No, I don't spend a
7 lot of time looking at what other people are doing,
8 certainly not in the closed loop space, either.

9 Q What about American Express? Do you know how
10 their gift card program works?

11 A I don't personally, no.

12 Q I brought an American Express gift card
13 packaging. What I have here is a golden envelope. It
14 says American Express, the American Express gift card on
15 the front. And you open it up, there's no card in here
16 anymore, but if you open it up, it's got the terms and
17 conditions of the card. It's got some heavy stock paper
18 with some more information about how to use the card.
19 And then I'm going to represent to you that I have this
20 carbon copy sheet that the card that used to exist here,
21 you can see gift card here and it has sticky, gummy
22 stuff. And on the back of it, it's a document entitled
23 purchase record. And right there, the teller writes in
24 the month, day and year of the date of purchase. Do you

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1 see that?

2 A Yes.

3 Q I'm going to represent to you that American
4 Express has, at this point in time, had a fee that
5 kicked in after a certain amount of time after the
6 purchase date. Do you think this is convenient for the
7 customer, for the recipient --

8 MR. HARVEY: Object to the form of the
9 question.

10 BY MR. LALLI:

11 Q -- to have the purchase date in the packaging
12 designed to reach the recipient?

13 A Once again, I'd say that's speculation. What I
14 think, because I've already explained, I can't speak to
15 American Express and how they handle their customers in
16 the event of lost, stolen. I don't know if they're
17 asking them to register or any of that. So it's hard to
18 say. It's going to depend. I'd say what's more
19 convenient to the customer is having a card that's
20 completely protected and that they can look up and see
21 the balance on.

22 Q Did it ever cross your mind to have the issue
23 date on the card or within its packaging materials?

24 A It's never been presented to me as an option

<p style="text-align: center;">Page 81</p> <p>1 that we would want to put on the card.</p> <p>2 Q And you've never personally even thought of it</p> <p>3 as an option?</p> <p>4 A No.</p> <p>5 Q So they can go on a Web site and they can learn</p> <p>6 the date of issue?</p> <p>7 A Yes.</p> <p>8 Q And they can call the number and learn the date</p> <p>9 of issue, is that correct?</p> <p>10 A That's my understanding, yes.</p> <p>11 Q Have you ever called the number on the back of</p> <p>12 the gift card?</p> <p>13 A I have not.</p> <p>14 Q Would it surprise you if I told you that I</p> <p>15 tried to call the number on the back of the gift card</p> <p>16 and I couldn't get the issue date?</p> <p>17 A Yes.</p> <p>18 Q It would surprise you?</p> <p>19 A Yes.</p> <p>20 Q You described your training materials that you</p> <p>21 spoke about. Does that encompass all of TD Bank's</p> <p>22 branches or is that specific to we're going to send</p> <p>23 these training materials to Maine and different training</p> <p>24 materials go to Florida?</p>	<p style="text-align: center;">Page 83</p> <p>1 copy. I'll produce these with Bates numbers on</p> <p>2 them separately. They're similar to documents</p> <p>3 that have already been produced in this</p> <p>4 litigation. But that came to my attention</p> <p>5 yesterday and I wanted you to have those.</p> <p>6 (Discussion off the record.)</p> <p>7 ---</p> <p>8 (Recess.)</p> <p>9 ---</p> <p>10 BY MR. LALLI:</p> <p>11 Q I want to cover a few things we talked about</p> <p>12 prior to lunch. The first was the issue date being on</p> <p>13 the card and whether there are any thoughts of doing</p> <p>14 that. I think you testified that was never a thought.</p> <p>15 A Correct.</p> <p>16 Q Were there any discussions that you know of</p> <p>17 between anyone about having the issue date either on the</p> <p>18 card, on a sticker, or contained in the materials that</p> <p>19 were designed to reach the recipient?</p> <p>20 A No conversations that I've had.</p> <p>21 Q What about conversations that you've heard of?</p> <p>22 A No.</p> <p>23 Q Now, at some point, TD Bank took on Commerce's</p> <p>24 gift card fee structure, is that correct?</p>
<p style="text-align: center;">Page 82</p> <p>1 A No, we have one gift card guide that goes to</p> <p>2 Maine and to Florida.</p> <p>3 Q So the gift card transaction is, from the</p> <p>4 company's perspective, standardized at every branch?</p> <p>5 A Correct.</p> <p>6 Q Do you think it's important not to have</p> <p>7 advertisements that may mislead a customer about the</p> <p>8 terms and conditions?</p> <p>9 A Yes.</p> <p>10 Q Why do you think that?</p> <p>11 A Because you don't want to mislead them about</p> <p>12 the terms and conditions. Now, that said, you can't</p> <p>13 have advertisements that include all the terms and</p> <p>14 conditions.</p> <p>15 Q What type of advertisements were used in TD</p> <p>16 Bank at the time you started in '07 regarding gift</p> <p>17 cards?</p> <p>18 MR. HARVEY: Can I -- hold the</p> <p>19 question, but you're obviously returning to the</p> <p>20 subject. I told you earlier we have some</p> <p>21 additional documents that were some marketing</p> <p>22 materials used by TD Bank in 2008. They state</p> <p>23 TD Banknorth. That's when they were using that</p> <p>24 as a trade name in 2008. I've just given you a</p>	<p style="text-align: center;">Page 84</p> <p>1 A Yes.</p> <p>2 Q After the merger or acquisition?</p> <p>3 A Yes.</p> <p>4 Q At one point, Commerce wasn't charging any</p> <p>5 fees. I think it was in 2005. They were charging zero</p> <p>6 fees for their gift cards, no purchase fees, no</p> <p>7 maintenance fees, nothing. Are you aware of that?</p> <p>8 A That's my understanding. I wasn't there at the</p> <p>9 time, but yes, that's my understanding.</p> <p>10 Q At the time of the acquisition, moving the gift</p> <p>11 card programs together, was there any discussion about</p> <p>12 not having any fees or about having no fees?</p> <p>13 A No.</p> <p>14 Q Any discussion, any thoughts of it that you</p> <p>15 had?</p> <p>16 A No.</p> <p>17 Q Was that even an option?</p> <p>18 A No.</p> <p>19 Q Do you know why?</p> <p>20 A Yes. As I said, the first rule of integration</p> <p>21 is pick a product set. You never create a hybrid. So</p> <p>22 we picked a product set and that's what we picked. We</p> <p>23 picked the Commerce product set. We didn't want to</p> <p>24 create a third product set because it's confusing to</p>

<p style="text-align: center;">Page 85</p> <p>1 customers, confusing to employees. You just don't want 2 to do it.</p> <p>3 Q Would it have been more or less confusion to 4 customers if there were no fees?</p> <p>5 MR. HARVEY: Object to the form of the 6 question.</p> <p>7 THE WITNESS: I don't know. I mean, I 8 don't know.</p> <p>9 BY MR. LALLI:</p> <p>10 Q There's a good-through date on the front of the 11 card, right?</p> <p>12 A Yes.</p> <p>13 Q And what's the purpose of the good-through 14 date?</p> <p>15 A The good-through date, it's not like an expired 16 date on a credit card. It's really Visa makes us put 17 that on there. So my understanding of what it's for is 18 the card is only good until that date and then a new 19 card would be issued if there's still a balance on it. 20 Not unlike why is there an expire date on your credit 21 card? Same sort of thing.</p> <p>22 Q And you testified before that if fees were 23 going to be assessed, they would be assessed prior to 24 the good-through date?</p>	<p style="text-align: center;">Page 87</p> <p>1 A No. There is no policy that says reimburse 2 fees if a customer complains about gift cards, no.</p> <p>3 Q Then why were you doing it?</p> <p>4 A I mean, that would be a question for Mamie. I 5 wasn't part of the decision process to reimburse the 6 fees.</p> <p>7 Q Was Mamie the sole person who decided to 8 reimburse the fees?</p> <p>9 A I don't know.</p> <p>10 Q Who else may have?</p> <p>11 A It could have been Mamie. It could have been 12 her boss.</p> <p>13 Q Who is that?</p> <p>14 A Her boss right now, her boss was Elaine 15 Olmhausen. She just changed and her name escaped me. 16 She reports in to Linda Verba ultimately.</p> <p>17 Q Now, you read Mr. Grimmer's deposition?</p> <p>18 A Yes.</p> <p>19 Q We had him draw sort of a corporate structure 20 for us just so we can get a sense of who the players are 21 and where you sit in the corporate structure, below the 22 president, above whoever else. Do you mind doing that 23 for us? Start with when you began in September of '07. 24 Or I guess it would be June of '06, right?</p>
<p style="text-align: center;">Page 86</p> <p>1 A I think I said they could be assessed. The 2 good-through date and fees are two totally different -- 3 they have nothing to do with each other at all.</p> <p>4 Q Do you think that at all could be confusing to 5 a customer?</p> <p>6 MR. HARVEY: Object to the form of the 7 question.</p> <p>8 THE WITNESS: Speculation. I have no 9 idea.</p> <p>10 BY MR. LALLI:</p> <p>11 Q You don't know?</p> <p>12 A I don't know.</p> <p>13 Q I want to go one more time back to Mamie Prout 14 and these complaints with the fees. You testified that 15 the customers would be made whole, right, if they 16 complained about fees? Is that true?</p> <p>17 A Yes.</p> <p>18 Q And you said that making whole meant you would 19 reimburse the fees to the customers. Is that correct?</p> <p>20 A Yes, that's correct. That's what Mamie had 21 told me, yes, in those cases.</p> <p>22 Q Was that the policy, to reimburse fees whenever 23 a customer complained about them regarding the gift 24 cards?</p>	<p style="text-align: center;">Page 88</p> <p>1 A Yes, I came in June of '06. So we can start 2 with me. I would be product management for deposit 3 products, as we talked about. I reported in to a 4 gentleman by the name of Tom Dick, who at the time had 5 products and marketing. And Tom reported to Bill Ryan, 6 who was the president and CEO of TD Banknorth.</p> <p>7 Q And at the time, who was below you?</p> <p>8 A Who was below me?</p> <p>9 Q Yes. Who reported to you?</p> <p>10 A When I first started, there was Krista 11 Abbotoni, who had checking. There was Anna O'Connor, 12 who had savings. Michelle Murphy, who was more like a 13 project, policy and procedure type person. And that was 14 it for direct reports. I had an assistant, too.</p> <p>15 Q Who was your assistant?</p> <p>16 A Francesca Cormier. So Anna had a direct 17 report. And that was it.</p> <p>18 Q And then how did this change over time?</p> <p>19 A So over time, what happened was --</p> <p>20 MR. FODERA: Why don't you just date 21 that and do it again.</p> <p>22 THE WITNESS: This would be June 2006. 23 So then in May of 2008, a couple things 24 happened. So you've now got Bharat Masrani,</p>

<p style="text-align: center;">Page 89</p> <p>1 who is president of TD Bank. You've got Tom 2 Dick, who now just has money in, deposit 3 products. You've got Matt Chevalier, who's got 4 checking. And now I have debit. Tom's got 5 savings. Checking reports in to me. He's got 6 data analysis. Now marketing is no longer with 7 products. Marketing and products are two 8 different groups. And that's John Cunningham. 9 And then, so under Bharat, you've got retail 10 distribution, which would be Fred Graziano, 11 which is where Linda Verba comes in. Do you 12 want me to draw that?</p> <p>13 BY MR. LALLI: 14 Q Show me where Linda Verba would be. 15 A For retail, you've got Fred -- I'll call it 16 retail distribution. So you've got Fred Graziano, who 17 runs retail distribution. Fred's got Linda Verba. He's 18 got commercial, too, but I'm not as familiar with the 19 commercial setup. And Suzanne Poole. Linda is 20 responsible for retail service. Suzanne is responsible 21 for retail sales. So Jim works for Linda, as does 22 Mamie. And, as we mentioned at the very start, I now 23 work for, or I will sometime in the beginning of April, 24 I think April 12, I'll be working for Suzanne Poole.</p>	<p style="text-align: center;">Page 91</p> <p>1 team in September of '09. 2 Q And were there any changes since September '09? 3 A So since September '09 -- 4 Q Wait. 5 A So now let's go up to January. So we've got 6 Bharat. That has not changed. I've got Paul Vessey. 7 Paul is responsible for all product management, money in 8 and money out. So money in is what we call deposits. 9 Money out is lending. 10 MR. FODERA: On retail, not commercial? 11 THE WITNESS: From a retail 12 perspective, that's right, because there's 13 another gentleman on the commercial side called 14 Walter Owens, which I have very little to do 15 with and don't understand the structure. So 16 Tom's now back in Canada. And Mandita Bhakshi, 17 B-H-A-K-S-H-I -- I hope that's right. If it's 18 wrong, I'm in trouble. We have Mandita 19 Bhakshi, who's now replaced Tom. And that 20 happened around the April to August, September 21 time frame. There was a couple-month overlap. 22 BY MR. LALLI: 23 Q Of '09? 24 A Of '09, yes. And Mandita's world is debit,</p>
<p style="text-align: center;">Page 90</p> <p>1 Q And this time period is May 2008 until when? 2 A There was a layer put in between Tom and 3 Bharat, a gentleman by the name of Paul Vessey. And 4 that was sometime in 2009 or late 2008 -- I'm not 5 completely sure -- that changed. As we talked about, 6 debit moved on its own. And there's Sunil in January 7 2010. Those would be the major changes. 8 Q And who reported to you? 9 A In May? 10 Q Yes. 11 A So in May -- 12 Q This is May of '08? 13 A May of '08. So Krista went through the 14 integration. May of '08, I still had Pattie because I 15 still had debit. 16 Q That's Pattie Gallant? 17 A Pattie Gallant. Who else did I have in May? 18 Krista Abbotoni was still helping but I hired -- I 19 believe Michelle Murphy was still with me as well. 20 Between May and September '09, for checking, I had 21 Shelly Photiades. I still had Pattie, debit. I have 22 another guy by the name of Kevin Fitzgerald, but he's 23 not responsible for a product. He's responsible for a 24 project. It's called project 49. That would be the</p>	<p style="text-align: center;">Page 92</p> <p>1 which is Sunil; day-to-day, which is me; savings, which 2 is Tami Farrow. Pardon my handwriting. And data 3 analysis. And the other changes from my time, I still 4 have Shelly. I still have Kevin. And I've just hired 5 someone new called Lindsay Sacknoff, who we talked about 6 earlier. 7 Q So Pattie is no longer on your team? 8 A No. Pattie works for Sunil. 9 Q And is that accurate up to before you make your 10 change in April? 11 A That is accurate up to before I make my change 12 in April, yes. 13 (Documents marked for identification as 14 Chevalier exhibits 3A through 3C.) 15 BY MR. LALLI: 16 Q Do you have to go back to Canada at some point 17 based on your visa? 18 A Yes. 19 Q When's that going to happen? 20 A So I just signed up for it in July of 2009. I 21 extended my L1A, which is my work visa in the United 22 States, for three more years. So that will get us up to 23 January 2012. And then I can renew for one more year 24 after that for a total of seven years I'll have been in</p>

<p style="text-align: center;">Page 93</p> <p>1 the country. And then I'm either going to go back to</p> <p>2 Canada or I'm going to go through the green card</p> <p>3 process.</p> <p>4 Q And you're not sure what you're going to do</p> <p>5 yet?</p> <p>6 A I'm not sure what I'm going to do yet.</p> <p>7 Whatever the bank wants me to do.</p> <p>8 Q Before we broke for lunch, we just, I think,</p> <p>9 started talking about advertisements. Are you aware of</p> <p>10 any advertisements that contained information about the</p> <p>11 monthly maintenance fee?</p> <p>12 A About the monthly maintenance fee?</p> <p>13 Q Yes.</p> <p>14 A Most of our advertisements only talk about the</p> <p>15 purchase fee.</p> <p>16 Q So is the answer no?</p> <p>17 A No, that's right.</p> <p>18 MR. LALLI: This will be Chevalier-4.</p> <p>19 (Document marked for identification as</p> <p>20 Chevalier exhibit 4.)</p> <p>21 BY MR. LALLI:</p> <p>22 Q I'll represent this has been produced by your</p> <p>23 counsel in document production pursuant to discovery</p> <p>24 requests. Have you ever seen this before?</p>	<p style="text-align: center;">Page 95</p> <p>1 couple years ago. It looks like it's in that 2008 time</p> <p>2 frame.</p> <p>3 MR. FODERA: I'm sorry for</p> <p>4 interrupting, Mr. Chevalier. The court</p> <p>5 reporter can't take down what you're pointing</p> <p>6 to.</p> <p>7 THE WITNESS: Oh, I'm sorry.</p> <p>8 MR. FODERA: So if you just say in</p> <p>9 words what you're pointing to, the difference</p> <p>10 in style. You just pointed to the word "gift"</p> <p>11 or maybe to something else.</p> <p>12 THE WITNESS: "The perfect gift" or</p> <p>13 "gift card," the font on that is not a recently</p> <p>14 used font.</p> <p>15 MR. HARVEY: Can I offer something?</p> <p>16 There is a date in the lower left-hand corner.</p> <p>17 THE WITNESS: Yes, 2008.</p> <p>18 BY MR. LALLI:</p> <p>19 Q Is this an advertisement that you would have</p> <p>20 okayed? Or signed off on, I think was the word you</p> <p>21 used.</p> <p>22 A Possibly.</p> <p>23 Q What form did this -- this is a copy. So what</p> <p>24 form did it take? Was it a poster? What was it?</p>
<p style="text-align: center;">Page 94</p> <p>1 A I believe so.</p> <p>2 Q Have you seen this form of the advertisement or</p> <p>3 have you seen the actual advertisement?</p> <p>4 A I don't understand your question.</p> <p>5 Q This is a copy of an advertisement, right?</p> <p>6 A Yes.</p> <p>7 Q Have you seen the actual advertisement?</p> <p>8 A I believe so.</p> <p>9 Q Do you know when this was in use?</p> <p>10 A No. I mean, it looks like it might have been</p> <p>11 2008, right after the rebranding of legacy Commerce to</p> <p>12 TD Bank.</p> <p>13 Q Do you know where it would have been in use?</p> <p>14 A Without knowing the date, it's hard to say.</p> <p>15 Q If it was, like you said, late 2008, if it was</p> <p>16 at that point in time, where would it have been in use?</p> <p>17 A If it was in late 2008, it would have been in</p> <p>18 the legacy Commerce, the legacy Commerce that we have</p> <p>19 branded to TD Bank.</p> <p>20 Q Why do you think it's late 2008?</p> <p>21 A Only because it's labeled TD Bank because we</p> <p>22 weren't TD Banknorth in the north until November of --</p> <p>23 let's see. We rebranded in the north in September of</p> <p>24 2009. This looks like a little bit of an older piece, a</p>	<p style="text-align: center;">Page 96</p> <p>1 A I'm not totally sure.</p> <p>2 Q Is it your understanding it would have been</p> <p>3 larger than what you have in front of you?</p> <p>4 A It depends on the application in the store.</p> <p>5 But in our stores, we will put marketing. It depends.</p> <p>6 But it would be a poster or smaller, eight and a half by</p> <p>7 11 card.</p> <p>8 Q I see at the top, right there's a word. I</p> <p>9 don't know if it's highlighted or just has a background</p> <p>10 behind it. But it says "free," exclamation point. And</p> <p>11 it is all capitals. Do you see that?</p> <p>12 A Yes.</p> <p>13 Q What does that mean?</p> <p>14 A So it means that there is no cost to purchase</p> <p>15 the card.</p> <p>16 Q Any thinking on whether or not that may confuse</p> <p>17 a customer into thinking that there are no fees</p> <p>18 associated with the card at all?</p> <p>19 MR. HARVEY: Object to the form of the</p> <p>20 question.</p> <p>21 THE WITNESS: That would be</p> <p>22 speculation. I can't say what customers are</p> <p>23 going to think by seeing that.</p> <p>24 BY MR. LALLI:</p>

25 (Pages 97 to 100)

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<p>1 Q Well, what does the word "free" mean to you?</p> <p>2 A So free for this, it means I can acquire a gift</p> <p>3 card for free. Most or a lot of people will charge to</p> <p>4 acquire a gift card. We do not.</p> <p>5 Q Is there anything about a purchase fee on this?</p> <p>6 A I see on the bottom right-hand corner, it says</p> <p>7 no purchase fee.</p> <p>8 Q And what you're pointing, to I'm going to</p> <p>9 circle it on the original. It's down here, correct?</p> <p>10 A Yes, bottom right-hand corner.</p> <p>11 Q Now, can you tell me what size font that is in?</p> <p>12 A No.</p> <p>13 Q Is it a relatively small font?</p> <p>14 A Yes.</p> <p>15 Q Is it the smallest font on this advertisement?</p> <p>16 A I assume so.</p> <p>17 Q Well, I mean, you can look at the other fonts</p> <p>18 that are used.</p> <p>19 A It's hard to say. Is it smaller than the word</p> <p>20 "Visa"? I don't know. But it's probably the smallest</p> <p>21 font on the form, yes.</p> <p>22 Q And would you characterize the "no purchase</p> <p>23 fee" as being prominently displayed on this</p> <p>24 advertisement?</p>	<p>1 BY MR. LALLI:</p> <p>2 Q So where would this have been in use?</p> <p>3 A In the store.</p> <p>4 Q In what stores?</p> <p>5 A I'm sorry. Geographically? It would be in the</p> <p>6 north. So anywhere where we were TD Banknorth branded.</p> <p>7 Q What states does that encompass?</p> <p>8 A That encompasses Maine, Massachusetts,</p> <p>9 Connecticut, Vermont. I think I got them all. Yes,</p> <p>10 that's pretty much it. Because where we have</p> <p>11 overlapping states, we rebranded the outside of the</p> <p>12 store. So where we rebranded Commerce to TD Bank, we</p> <p>13 also rebranded TD Banknorth to TD Bank so we didn't</p> <p>14 confuse our customers with having two green logos with</p> <p>15 two different names. In the north we were still TD</p> <p>16 Banknorth until September 2009, when we rebranded to TD</p> <p>17 Bank.</p> <p>18 Q Now, if you look at the exhibit number 5 that</p> <p>19 I've given you, in the bottom right-hand corner is</p> <p>20 another all capital "free." Do you see that?</p> <p>21 A Yes.</p> <p>22 Q And it's in relatively large font. Beneath</p> <p>23 that, there's an all capital "no purchase fee." Do you</p> <p>24 see that?</p>
Page 98	Page 100
<p>1 A No.</p> <p>2 Q And it's your feeling that this isn't confusing</p> <p>3 at all to a customer?</p> <p>4 A I can't say if it's confusing or not to a</p> <p>5 customer.</p> <p>6 Q Now, we were just given some additional</p> <p>7 advertisements that were in use. And it looks like the</p> <p>8 form changed somewhat.</p> <p>9 MR. LALLI: This will be Chevalier-5.</p> <p>10 (Document marked for identification as</p> <p>11 Chevalier exhibit 5.)</p> <p>12 THE WITNESS: This is the holiday card</p> <p>13 from 2008.</p> <p>14 MR. FODERA: I just want clarification.</p> <p>15 You're looking at one sheet, Mr. Chevalier. We</p> <p>16 were handed a packet. Are they all from 2008?</p> <p>17 THE WITNESS: I need to see what else</p> <p>18 is in the packet.</p> <p>19 MR. HARVEY: I can represent to you</p> <p>20 that it's my understanding these were used in</p> <p>21 2008.</p> <p>22 MR. FODERA: That's fine.</p> <p>23 MR. HARVEY: That's what I was</p> <p>24 informed.</p>	<p>1 A Yes.</p> <p>2 Q And the "no purchase fee" is in smaller font</p> <p>3 than the "free." Would you agree with me there?</p> <p>4 A Yes.</p> <p>5 Q Is this another advertisement that you would</p> <p>6 have signed off on?</p> <p>7 A Yes.</p> <p>8 Q I guess my first question is, why is "no</p> <p>9 purchase fee" not like it is on the previous exhibit in</p> <p>10 a completely different place on the advertisement?</p> <p>11 A Sorry. Why is it not in the same place?</p> <p>12 Q On the first exhibit, number 4 that we talked</p> <p>13 about, you have "free" at the very top of the</p> <p>14 advertisement in big, bold letters. Then at the very</p> <p>15 bottom, there's the "no purchase fee" message. Do you</p> <p>16 agree with that?</p> <p>17 A Yes.</p> <p>18 Q It changed, right?</p> <p>19 A Yes.</p> <p>20 Q Here it has "free" and "no purchase fee" right</p> <p>21 next to each other. Do you agree with me? Or beneath</p> <p>22 each other?</p> <p>23 A Yes.</p> <p>24 Q Why was that change made?</p>

<p style="text-align: center;">Page 101</p> <p>1 A I mean, this "free", "no purchase fee" is what 2 we put on all our marketing material now. If you look 3 at "free" here, free to us has always meant free to 4 purchase. When the gift card is sold, as we talked 5 about earlier, we always give the terms and conditions. 6 That's always clear, what the fees are in the terms and 7 conditions. As I said, our training tells our employees 8 to tell the customer about the terms and conditions. It 9 also tells the customer to provide the recipient, tell 10 them the terms and conditions and tells them about the 11 fee. All this does is reinforces what the terms and 12 conditions and the policies and procedures are. It's a 13 further reinforcement to make sure there's no confusion 14 to the fact that free to us means no purchase fee. 15 Q So you want to make sure there's no confusion, 16 that free doesn't mean free, no fees at all, but free 17 means no purchase fee only? 18 A Correct. 19 Q And would you characterize this card, exhibit 20 number 5, or this advertisement, as more or less 21 confusing on that point than exhibit number 4? 22 MR. HARVEY: Object to the form of the 23 question. 24 THE WITNESS: These are not the only</p>	<p style="text-align: center;">Page 103</p> <p>1 A Correct. 2 Q I just want to be clear for the record we're 3 talking about an exhibit. When I said it's in a 4 completely different place, I meant that the "free" is 5 at the top of the card in bold, large font, and the "no 6 purchase fee" is way at the bottom of the card in 7 smaller font. You would agree with me? 8 A Yes. 9 Q Now, you just spoke about what your employees 10 do in terms of telling people the terms and conditions. 11 Whose responsibility is it to train your employees? And 12 when I say train your employees, obviously that can mean 13 a lot. I'm specifically talking about the gift card 14 transaction. 15 A Can you be specific about what type of 16 employees? New employees? Existing employees? 17 Q Let's start with new employees. 18 A The new employees go through new employee 19 training. And that would be learning and development 20 and our retail distribution folks that do that training. 21 Q And do you know what that training encompasses 22 in terms of the gift card transaction? 23 A I'm not specifically sure, no. 24 Q Do you know if gift card transactions are</p>
<p style="text-align: center;">Page 102</p> <p>1 things, the only tools used to sell the gift 2 cards. So when the gift card is sold, whether 3 I'm in this advertisement, number 5, or this 4 advertisement, number 4, this is not the only 5 thing that's used. What still happens is the 6 employee is still giving the terms and 7 conditions. They're still making sure it's 8 absolutely clear. 9 BY MR. LALLI: 10 Q Taking all that aside and only looking at these 11 two exhibits, these two advertisements, is 5 more or 12 less confusing on the point that free means no purchase 13 fee than 4? 14 MR. HARVEY: Object to the form of the 15 question. 16 THE WITNESS: It's speculative because 17 they both have the same content. They both 18 have "free." They both have "no purchase fee." 19 BY MR. LALLI: 20 Q But you would agree with me -- 21 A I would agree "no purchase fee" is smaller. 22 It's still on both. 23 Q And it's in a completely different place, 24 correct?</p>	<p style="text-align: center;">Page 104</p> <p>1 brought up in that training? 2 A I believe so but I'm not totally sure. I've 3 not done the new hire training myself. 4 Q So there's new hire training and there's also 5 current employee training? 6 A Yes. 7 Q Who takes care of the current employee 8 training? 9 A Relative to gift card? 10 Q Yes. 11 A So that would be our annual sort of training 12 guide that goes out every year. And that's put out, as 13 we discussed earlier, from the product team with help 14 from operations and retail operations. 15 Q Does the training guide have a name? 16 A Yes, I think it's called the gift card guide. 17 And there's one every year. 18 Q Apart from that material -- is that material 19 sent to each branch individually? 20 A I'm not sure if we actually send it out in hard 21 copy or send it out electronically. I'm not sure which 22 one. 23 Q But it is delivered either electronically or 24 through regular mail to each branch?</p>

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<p>1 A Yes.</p> <p>2 Q Is there any in-store training that takes</p> <p>3 place?</p> <p>4 A Yes.</p> <p>5 Q Relative to gift card transactions?</p> <p>6 A Yes.</p> <p>7 Q And how is that conducted? How frequent is it?</p> <p>8 A My understanding would be anything that</p> <p>9 changes, the store staff would communicate that. I</p> <p>10 don't know if they do it through a huddle or how they do</p> <p>11 it. Jim Grimmer could tell you how those things are</p> <p>12 distributed. But there's refresher training, as I said,</p> <p>13 that happens every year.</p> <p>14 Q And the refresher training, is that done by the</p> <p>15 product team in operations?</p> <p>16 A No, we create it. We manufacture the training</p> <p>17 and then it's pushed out to the stores. And so I</p> <p>18 believe it's the store manager. Once again, the retail</p> <p>19 operations folks, Jim Grimmer would be able to say how</p> <p>20 it actually gets disseminated in the stores themselves.</p> <p>21 That's not a product role.</p> <p>22 Q What are the goals of in-store training</p> <p>23 relative to gift cards?</p> <p>24 A Just to make sure they understand what the</p>	<p>1 wouldn't have signed off on this one.</p> <p>2 Q You're characterizing that as a tips sheet?</p> <p>3 A I'm sorry, it's simply clarifying a process</p> <p>4 that we have.</p> <p>5 Q Who would have created this?</p> <p>6 A I don't know.</p> <p>7 Q If you look midway down the first page, it's</p> <p>8 got in bold lettering, "Quick hints to keep the lines</p> <p>9 moving." Do you see that?</p> <p>10 A I do.</p> <p>11 Q Any idea what that means?</p> <p>12 MR. HARVEY: Object to the form of the</p> <p>13 question.</p> <p>14 THE WITNESS: I would simply speculate</p> <p>15 that it's just how to make sure the store</p> <p>16 staffs don't get tripped up in terms of so</p> <p>17 they're not fumbling around for information,</p> <p>18 that they know what to do.</p> <p>19 BY MR. LALLI:</p> <p>20 Q Is it your understanding that it's better for</p> <p>21 TD Bank if the transactions are completed quickly, the</p> <p>22 gift card transactions are completed quickly?</p> <p>23 A Yes.</p> <p>24 Q It is better or it is not better?</p>
Page 106	Page 108
<p>1 process is to sell the card and why we sell the card,</p> <p>2 what the purpose of the card is.</p> <p>3 Q Is one of the goals to ensure that the gift</p> <p>4 card transaction is uniform throughout the branches?</p> <p>5 A It's uniform training, absolutely, yes.</p> <p>6 Q The training is uniform?</p> <p>7 A Yes. We do the same training, as we discussed</p> <p>8 earlier, it's only one guide that goes everywhere.</p> <p>9 MR. FODERA: One guy or guide?</p> <p>10 THE WITNESS: Guide. It's not one</p> <p>11 individual. It's one guide. I apologize.</p> <p>12 (Document marked for identification as</p> <p>13 Chevalier exhibit 6.)</p> <p>14 BY MR. LALLI:</p> <p>15 Q Have you ever seen this?</p> <p>16 A I'm not entirely sure.</p> <p>17 Q Do you know what it is?</p> <p>18 A It looks like we're trying to clarify here</p> <p>19 because we had different bin numbers in different</p> <p>20 markets. So this looks more like -- well, it says tips.</p> <p>21 I wouldn't have been directly involved in this one.</p> <p>22 Q Would you have not okayed this or signed off on</p> <p>23 this before it went out?</p> <p>24 A Yes. This is a tips sheet. So I probably</p>	<p>1 A It's better for the bank and better for the</p> <p>2 customer.</p> <p>3 Q And would a transaction be faster or not</p> <p>4 faster, I guess with all things being equal, a</p> <p>5 transaction where a customer service representative</p> <p>6 fully explains the terms and conditions versus a</p> <p>7 transaction where the customer service representative</p> <p>8 skimps on that?</p> <p>9 MR. HARVEY: Object to the form of the</p> <p>10 question.</p> <p>11 THE WITNESS: I don't understand the</p> <p>12 question.</p> <p>13 BY MR. LALLI:</p> <p>14 Q All I'm asking is, what's faster, what would be</p> <p>15 faster, if a customer -- all things being equal, which</p> <p>16 transaction would be faster, one in which a customer</p> <p>17 service representative fully explains the terms and</p> <p>18 conditions to the purchaser of a card or one in which</p> <p>19 the customer service representative does not fully</p> <p>20 explain the terms and conditions of the card to the</p> <p>21 purchaser, with all other things being equal?</p> <p>22 A Any transaction where you do less things than</p> <p>23 more things is going to go faster if you do less things.</p> <p>24 Once again, though, our training and our procedures do</p>

<p style="text-align: center;">Page 109</p> <p>1 not instruct the employees to not -- at no point do we</p> <p>2 say, hey, if you want to make it fast, skip out on</p> <p>3 these or whatever word you used, or skip these steps.</p> <p>4 No, that's not the policy of the training.</p> <p>5 Q Now, is it your understanding that the customer</p> <p>6 service representatives are trained to inform the</p> <p>7 purchaser about the maintenance fee without any</p> <p>8 questioning, that they affirmatively take that step?</p> <p>9 MR. HARVEY: I'm sorry, could I get</p> <p>10 that question read back?</p> <p>11 (Pending question read back.)</p> <p>12 THE WITNESS: Can you rephrase it so</p> <p>13 that I understand?</p> <p>14 BY MR. LALLI:</p> <p>15 Q Sure. Do you train your employees to</p> <p>16 affirmatively inform the purchasers of gift cards about</p> <p>17 the monthly maintenance fee?</p> <p>18 A Yes.</p> <p>19 Q And are they instructed to affirmatively inform</p> <p>20 the customers, the purchasers, about the maintenance fee</p> <p>21 in response to questioning or just as part of the</p> <p>22 transaction?</p> <p>23 A That is part of the transaction. We tell them</p> <p>24 in the training to give the terms and conditions. We</p>	<p style="text-align: center;">Page 111</p> <p>1 A Yes.</p> <p>2 Q Is a whole other step to say, hey, customer,</p> <p>3 there's also this monthly maintenance fee that kicks in</p> <p>4 after X date? Is that a fair representation?</p> <p>5 A No, I would say that the terms and conditions,</p> <p>6 the step is that's where everything they need to know</p> <p>7 about the fees, the card, how the card operates, it's</p> <p>8 all in the terms and conditions. So we say give the</p> <p>9 terms and conditions. In the training, we say tell them</p> <p>10 about the fee. Tell them to tell whoever they gave the</p> <p>11 gift to about the fee. If you want to call that a</p> <p>12 different step, it's not like we have numbered steps.</p> <p>13 It's certainly in the training. But the key part for us</p> <p>14 is you've got to give them the terms and conditions.</p> <p>15 Q Is there any mechanism to ensure that the</p> <p>16 employees are following the training?</p> <p>17 A No.</p> <p>18 Q Is there any secret shopper type policy you</p> <p>19 guys have?</p> <p>20 A Do you mean like mystery shoppers that come</p> <p>21 into the store?</p> <p>22 Q Sure.</p> <p>23 A We have mystery shoppers that come into the</p> <p>24 stores and we call it a customer WOW index. Those</p>
<p style="text-align: center;">Page 110</p> <p>1 tell them to tell the customer about the fee. And we</p> <p>2 tell them to tell who they give the card to about the</p> <p>3 fee.</p> <p>4 Q When we talked about this before, I think I</p> <p>5 understand that you just instruct your employees to make</p> <p>6 the purchaser aware of the terms and conditions.</p> <p>7 A Um-hm.</p> <p>8 Q That's correct, right?</p> <p>9 A That's correct.</p> <p>10 Q Now, in doing that, is that where you're</p> <p>11 thinking the monthly maintenance fee is advised of or is</p> <p>12 it a completely different step?</p> <p>13 A Well, if you look at the training we did in</p> <p>14 2009, it says specifically. The market-wise that goes</p> <p>15 with the training, it says it specifically, yes.</p> <p>16 Q So it's a different step?</p> <p>17 MR. HARVEY: Object to the form of the</p> <p>18 question.</p> <p>19 THE WITNESS: Ask the question again.</p> <p>20 BY MR. LALLI:</p> <p>21 Q If I'm an employee, I see this training guide</p> <p>22 and I have a checklist of things to do. One of them is</p> <p>23 to show the terms and conditions to the purchaser,</p> <p>24 right?</p>	<p style="text-align: center;">Page 112</p> <p>1 aren't specific to gift card, though. This is about</p> <p>2 what was your experience today? How did you feel about</p> <p>3 your experience?</p> <p>4 Q I just want to understand this. So you don't</p> <p>5 have people going to the bank, mystery shoppers going to</p> <p>6 the bank to purchase a gift card to determine whether or</p> <p>7 not the training guides on selling gift cards are being</p> <p>8 followed?</p> <p>9 A Not to my knowledge.</p> <p>10 (Document marked for identification as</p> <p>11 Chevalier exhibit 7.)</p> <p>12 BY MR. LALLI:</p> <p>13 Q Again, Mr. Chevalier, this is something that</p> <p>14 was produced by your counsel. Do you know what this</p> <p>15 document is?</p> <p>16 MR. HARVEY: The witness has just been</p> <p>17 handed it. You might want to give him a chance</p> <p>18 to review the whole document.</p> <p>19 MR. LALLI: Sure.</p> <p>20 THE WITNESS: Okay.</p> <p>21 BY MR. LALLI:</p> <p>22 Q Have you had a chance to review the document?</p> <p>23 A Yes.</p> <p>24 Q Have you ever seen it before?</p>

29 (Pages 113 to 116)

Page 113	Page 115
<p>1 A Yes.</p> <p>2 Q What is this?</p> <p>3 A This is a marketing kick-off document.</p> <p>4 Q And who creates this?</p> <p>5 A This would have been created by marketing.</p> <p>6 Q Is this something that you would sign off on?</p> <p>7 A No.</p> <p>8 Q What's the purpose of this marketing kick-off?</p> <p>9 A This is to get ready for the campaign that's</p> <p>10 coming for the holiday season.</p> <p>11 Q You said it's created by marketing. Who is it</p> <p>12 provided to?</p> <p>13 A Whenever we do a marketing campaign, it would</p> <p>14 be provided to anybody who's in attendance at the</p> <p>15 marketing kick-off meeting, which would be very similar</p> <p>16 to those people we've talked about, retail operations,</p> <p>17 debit card operations, product, Kevin Cane. That would</p> <p>18 be those people. I can't say who was actually at this</p> <p>19 meeting.</p> <p>20 Q Were you not at this meeting?</p> <p>21 A I'm not sure if I was at this one or not. I</p> <p>22 don't recall if I was at the meeting.</p> <p>23 Q But you may have been?</p> <p>24 A I may have been.</p>	<p>1 A Yes.</p> <p>2 Q What does that mean, highlight the "free"</p> <p>3 message?</p> <p>4 A Banknorth used to charge a purchase fee. The</p> <p>5 "free" message meaning there's no longer a purchase fee.</p> <p>6 Q What I'm getting at is, highlight the "free"</p> <p>7 message, who is doing the highlighting?</p> <p>8 A As we say earlier in the document, second</p> <p>9 paragraph, we'll be aligning our pricing with the</p> <p>10 Commerce Bank gift card, no up-front purchase fee. It's</p> <p>11 a 13-month breakage fee rather than six months. This is</p> <p>12 a good news message, holiday gift card campaign. So</p> <p>13 that's what we mean. We're going to highlight the</p> <p>14 "free" message because it is now free to purchase.</p> <p>15 Q You're going to highlight the "free" message to</p> <p>16 customers?</p> <p>17 A Yes. This is new. This was new at the time.</p> <p>18 Q And then below that, there's target market,</p> <p>19 strategies and then message/offer. Do you see that?</p> <p>20 A Yes.</p> <p>21 Q And then below that is merchandising. And the</p> <p>22 first segment is primary messages across merchandising</p> <p>23 zone A. What's merchandising zone A?</p> <p>24 A Merchandising zone A just means it's going to</p>
Page 114	Page 116
<p>1 Q Do you generally attend these type of meetings?</p> <p>2 A It's hit and miss. Sometimes I'll attend a</p> <p>3 kick-off meeting, sometimes I won't. It depends if my</p> <p>4 schedule will support it.</p> <p>5 Q You said these kick-off -- what did you call</p> <p>6 it?</p> <p>7 A It's a kick-off meeting.</p> <p>8 Q And the purpose of this document, is it an</p> <p>9 agenda?</p> <p>10 A It's not an agenda. It's saying, okay, what's</p> <p>11 changed in the program? What are the goals of the</p> <p>12 program? Who's the target? What are our key messages?</p> <p>13 And how are we going to display those messages? Like</p> <p>14 what zones? Zones just means how prominent is it going</p> <p>15 to be in the store?</p> <p>16 Q If you turn to page 2, you have campaign</p> <p>17 details, sales and marketing objectives. Do you see</p> <p>18 that?</p> <p>19 A I do.</p> <p>20 Q And underneath that, it says goals. The third</p> <p>21 goal says highlight the "free," in quotation marks,</p> <p>22 message at TDBN. Do you see that?</p> <p>23 A I do.</p> <p>24 Q And TDBN is TD Banknorth?</p>	<p>1 be the most prominent in the store.</p> <p>2 Q And then the first subpart beneath is TDBN,</p> <p>3 "It's free," in all capital letters with an exclamation</p> <p>4 point. Do you see that?</p> <p>5 A Yes.</p> <p>6 Q And what does that mean?</p> <p>7 A As I just said, it means that it's free to</p> <p>8 purchase.</p> <p>9 Q Am I reading this correctly that your</p> <p>10 merchandising in the most prominent section is going to</p> <p>11 read "it's free" or something to that effect?</p> <p>12 A It's going to say, as it did, that it's free to</p> <p>13 purchase. So we were highlighting fact that it is free</p> <p>14 to acquire this card.</p> <p>15 Q And the fourth one down says zone B supporting</p> <p>16 points. What does that mean?</p> <p>17 A So I'm not the one to explain what the</p> <p>18 difference is between zone A and zone B.</p> <p>19 Q Let me interrupt you real quick. Who would be?</p> <p>20 A Marketing. So Beth Hogan would have been our</p> <p>21 planner at the time for this.</p> <p>22 Q I'm sorry, I didn't mean to interrupt you.</p> <p>23 A No problem. Lise Moncilovich is another one</p> <p>24 who can certainly explain the differences between zone A</p>

30 (Pages 117 to 120)

Page 117	Page 119
<p>1 and zone B. This is a campaign where we are going to</p> <p>2 take it to both zones, and zone B is going to support</p> <p>3 that message.</p> <p>4 Q And that message being that the card is free?</p> <p>5 A That it's free to purchase, that's correct.</p> <p>6 MR. HARVEY: Mike, I think you know but</p> <p>7 just to be clear, TD Banknorth, that was a</p> <p>8 d/b/a or doing business as after the date of</p> <p>9 May 31, 2008. And before that date, it was the</p> <p>10 official name of the company.</p> <p>11 MR. LALLI: Sure.</p> <p>12 BY MR. LALLI:</p> <p>13 Q Mr. Chevalier, did you okay or sign off on</p> <p>14 press releases as well?</p> <p>15 A No.</p> <p>16 Q Who did?</p> <p>17 A I don't know. You'd have to tell me what press</p> <p>18 releases. I typically don't sign off -- well, let's see</p> <p>19 which ones you're talking about.</p> <p>20 (Document marked for identification as</p> <p>21 Chevalier exhibit 8.)</p> <p>22 BY MR. LALLI:</p> <p>23 Q Have you had a chance to read this?</p> <p>24 A Yes.</p>	<p>1 A To create excitement. It's to increase the</p> <p>2 excitement to the external marketplace, quite frankly.</p> <p>3 Q So it's TD Bank's intention that these press</p> <p>4 releases will be read by potential customers, new</p> <p>5 customers?</p> <p>6 A Yes.</p> <p>7 Q I'm going to focus in on the second paragraph</p> <p>8 that says, "TD Bank, America's most convenient bank,</p> <p>9 offers holiday shoppers the TD Bank or TD Banknorth gift</p> <p>10 card, the only free Visa gift cards that are gift-boxed</p> <p>11 and ready to give." Do you see that?</p> <p>12 A I do.</p> <p>13 Q And again, I'm going to assume that that word</p> <p>14 "free" means no purchase fee to you?</p> <p>15 A As indicated in the final sentence of the</p> <p>16 paragraph, yes.</p> <p>17 Q Do you have any inkling as to whether or not</p> <p>18 that may or may not confuse a customer?</p> <p>19 A Once again, I can't comment on what's going to</p> <p>20 confuse or not confuse a customer. I think if you read</p> <p>21 the whole paragraph, there would be no confusion.</p> <p>22 Q I believe what you're saying or what you're</p> <p>23 focusing on is the last sentence of that paragraph ends</p> <p>24 with, "And best of all, there is no purchase fee"?</p>
Page 118	Page 120
<p>1 Q I guess, in a general sense, where do these</p> <p>2 press releases come from within TD Bank?</p> <p>3 A From our public and corporate affairs</p> <p>4 department.</p> <p>5 Q And at the time, November of 2008, who was the</p> <p>6 person that you would speak to in corporate and public</p> <p>7 affairs? Who was the head?</p> <p>8 A The head would have been Neal Parmener.</p> <p>9 Q Do you know who drafted the press releases?</p> <p>10 A I'm not sure. It might have been Rebecca</p> <p>11 Saveto. But she took on a new job. I'm not sure if she</p> <p>12 had it at this point or not.</p> <p>13 Q And you said you're not sure if you signed off</p> <p>14 on this, it depends. Would you have signed off on this?</p> <p>15 A Just so we're clear, I don't sign off on press</p> <p>16 releases. It would have gone by my desk to say do you</p> <p>17 have any comments, but I don't sign off on these.</p> <p>18 Q Would this one have gone by your desk?</p> <p>19 A I believe this one would have.</p> <p>20 Q Do you remember reading it before it went out?</p> <p>21 A This one in particular, I believe I did. I</p> <p>22 mean, I have a few, a number of press releases that go</p> <p>23 by my desk. But I believe I did.</p> <p>24 Q What's the purpose of a press release?</p>	<p>1 A Yes.</p> <p>2 Q Is that correct?</p> <p>3 A Yes.</p> <p>4 Q So there's no chance that a customer would read</p> <p>5 this paragraph and think, oh, it's free, free meaning no</p> <p>6 fees at all?</p> <p>7 A I'm not going to speculate on what the customer</p> <p>8 is going to think.</p> <p>9 Q If free means no purchase fee, why even have</p> <p>10 the last sentence specify no purchase fee?</p> <p>11 MR. HARVEY: Object to the form of the</p> <p>12 question.</p> <p>13 THE WITNESS: Once again, it's</p> <p>14 consistent through all of this, adding</p> <p>15 additional clarity.</p> <p>16 BY MR. LALLI:</p> <p>17 Q So no purchase fee adds additional clarity to</p> <p>18 the word "free"?</p> <p>19 MR. HARVEY: Object to the form of the</p> <p>20 question.</p> <p>21 BY MR. LALLI:</p> <p>22 Q Is that your testimony?</p> <p>23 A So my testimony is we want to be, yes, we were</p> <p>24 trying to be clear through all of these communications.</p>

<p style="text-align: center;">Page 121</p> <p>1 Q So "no purchase fee" clarifies the meaning of</p> <p>2 "free"?</p> <p>3 MR. HARVEY: Object to the form of the</p> <p>4 question.</p> <p>5 THE WITNESS: Yes.</p> <p>6 BY MR. LALLI:</p> <p>7 Q I want you to take a look at this. I just have</p> <p>8 a question about it.</p> <p>9 MR. LALLI: This will be 9.</p> <p>10 (Document marked for identification as</p> <p>11 Chevalier exhibit 9.)</p> <p>12 THE WITNESS: Okay.</p> <p>13 BY MR. LALLI:</p> <p>14 Q Have you had a chance to read the document</p> <p>15 that's now been marked Chevalier-9?</p> <p>16 A I've scanned the document, the terms and</p> <p>17 conditions.</p> <p>18 Q And, like you said, it's entitled terms and</p> <p>19 conditions and important information concerning the gift</p> <p>20 card, effective September 2009. And it's a three or</p> <p>21 four-page document with all the terms and conditions of</p> <p>22 the card, is that correct?</p> <p>23 MR. HARVEY: Object to the form of the</p> <p>24 question. It's obviously a mark-up. It's not</p>	<p style="text-align: center;">Page 123</p> <p>1 Q And those e-mails were then produced to your</p> <p>2 counsel?</p> <p>3 A Yes.</p> <p>4 MR. LALLI: Could we take 10 minutes?</p> <p>5 MR. HARVEY: Sure.</p> <p>6 (Brief recess.)</p> <p>7 ---</p> <p>8 BY MR. LALLI:</p> <p>9 Q Just to clarify one point, I think you</p> <p>10 testified that the training informs your employees to</p> <p>11 make it absolutely clear to customers that free means no</p> <p>12 purchase fee. Do you remember testifying to that?</p> <p>13 A So, I mean, the training doesn't use the words</p> <p>14 "absolutely clear." I mean, I couldn't quote you word</p> <p>15 for word what the training says. But the training says</p> <p>16 that they are to inform the customer, yes.</p> <p>17 Q And how so?</p> <p>18 A How so?</p> <p>19 Q How are the employees instructed to inform the</p> <p>20 customers that free really means no purchase fee?</p> <p>21 A So we say inform the customer. We don't say,</p> <p>22 say these words or pass them this. What we tell them</p> <p>23 is, as I said, share the terms and conditions and inform</p> <p>24 the customer. And that's what we tell them.</p>
<p style="text-align: center;">Page 122</p> <p>1 the actual terms and conditions.</p> <p>2 MR. LALLI: I'm getting to that.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MR. LALLI:</p> <p>5 Q And there are a lot of changes and scribbles</p> <p>6 and it's been edited by someone. Is that correct?</p> <p>7 A That's what it would appear to be, yes.</p> <p>8 Q Do you know whose mark-ups these are?</p> <p>9 A No.</p> <p>10 Q Would you have ever done this to any terms and</p> <p>11 conditions?</p> <p>12 A Clarify "done this."</p> <p>13 Q Would you have ever been the one to make these</p> <p>14 kinds of mark-ups on terms and conditions?</p> <p>15 A No, not in this level of detail, no.</p> <p>16 Q Not at all?</p> <p>17 A Is your question relative to handwritten</p> <p>18 mark-ups?</p> <p>19 Q Any changes to the terms and conditions.</p> <p>20 A Possibly. But no, I don't go into the details</p> <p>21 of the terms and conditions.</p> <p>22 Q And if you did make changes to the terms and</p> <p>23 conditions, those would have been via e-mail?</p> <p>24 A Most likely, yes.</p>	<p style="text-align: center;">Page 124</p> <p>1 Q So it's up to the customer service</p> <p>2 representative or the teller to take that instruction,</p> <p>3 read it, understand it and then execute it?</p> <p>4 A It's training. Yes.</p> <p>5 Q And I think you testified there's nothing, no</p> <p>6 policies in effect to ensure that the training regarding</p> <p>7 gift card transactions is being followed?</p> <p>8 MR. HARVEY: Object to the form of the</p> <p>9 question. He said there was no mechanism.</p> <p>10 THE WITNESS: No process.</p> <p>11 BY MR. LALLI:</p> <p>12 Q Is there something out there that is checking</p> <p>13 up on the employees to ensure that they're following the</p> <p>14 training regarding gift card transactions?</p> <p>15 A I still don't understand the question. I've</p> <p>16 already answered that there's no mechanism, there's no</p> <p>17 process to say relative to gift card, are they doing</p> <p>18 each step of the training, no, there's not. There's</p> <p>19 customer satisfaction and customer advocacy measurements</p> <p>20 but not specific to gift card.</p> <p>21 Q So there's nothing -- I am not even going to</p> <p>22 use the word "policy" or "mechanism" or anything --</p> <p>23 nothing done to ensure that the TD Bank training</p> <p>24 regarding gift card transactions is being followed by</p>

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<p>1 the employees?</p> <p>2 A No, there's policy and procedure, and there's</p> <p>3 training.</p> <p>4 MR. LALLI: That's all I have for you.</p> <p>5 BY MR. HARVEY:</p> <p>6 Q I have a follow-up question. In the branches,</p> <p>7 there is a management structure, isn't there?</p> <p>8 A Yes.</p> <p>9 Q What are the names of people in the branches</p> <p>10 who are in the management structure?</p> <p>11 A There's branch manager. There is, I think</p> <p>12 there's an assistant branch manager. I'm not exactly</p> <p>13 sure what the titles are. And we also have market</p> <p>14 managers. There are regional market managers which</p> <p>15 provide support to the branches.</p> <p>16 Q Does the management structure in the branches</p> <p>17 have any responsibility for ensuring the training and</p> <p>18 policies and procedures are followed?</p> <p>19 A Yes.</p> <p>20 MR. HARVEY: I have no further</p> <p>21 questions.</p> <p>22 BY MR. LALLI:</p> <p>23 Q Just one follow-up. How --</p> <p>24 A So, I mean, they would use any number of</p>	<p>1 INDEX</p> <p>2 WITNESS PAGE</p> <p>3 MATTHEW J. CHEVALIER</p> <p>4 By Mr. Lalli ----- 3, 125</p> <p>5 By Mr. Harvey ----- 125</p> <p>6 ---</p> <p>7 CHEVALIER EXHIBITS MARKED</p> <p>8 1 Notice of deposition ----- 5</p> <p>9 2 Resume ----- 18</p> <p>10 3A-C Organizational charts ----- 92</p> <p>11 4 Advertisement ----- 93</p> <p>12 5 Advertisement ----- 98</p> <p>13 6 Gift card selling tips ----- 106</p> <p>14 7 Kick-off document ----- 112</p> <p>15 8 Press release ----- 117</p> <p>16 9 Terms and conditions ----- 121</p> <p>17 ---</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>
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<p>1 methods. So they would observe customer interactions,</p> <p>2 whether it's gift card or anything. They would</p> <p>3 potentially do role play. Any number of those types of</p> <p>4 things. I'm not in the branch, nor am I a branch</p> <p>5 manager. So that would be really speculation on my</p> <p>6 part. But any good manager, that's what they would do.</p> <p>7 Q Do you know if any records are kept regarding</p> <p>8 that oversight of the gift card transaction?</p> <p>9 A I do not know.</p> <p>10 MR. LALLI: That's all I have.</p> <p>11 (Deposition concluded at 1:55 p.m.)</p> <p>12 ---</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	<p>1 I have read the foregoing transcript of</p> <p>2 my deposition, given on March 18, 2010, and find it to</p> <p>3 be accurate and complete, to the best of my knowledge</p> <p>4 and recollection, except for the changes, if any, noted</p> <p>5 on a separate sheet herewith.</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

<p>Page 129</p> <p>1 ERRATA SHEET</p> <p>2 MATTHEW J. CHEVALIER - MARCH 18, 2010</p> <p>3 PAGE LINE CHANGE AND REASON THEREFOR</p> <p>4 _____</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p>	
<p>Page 130</p> <p>1 CERTIFICATION</p> <p>2</p> <p>3 I HEREBY CERTIFY that the foregoing is</p> <p>4 a true and correct transcript of the proceedings held in</p> <p>5 this matter, as transcribed from the stenographic notes</p> <p>6 taken by me on March 18, 2010.</p> <p>7</p> <p>8</p> <p>9 _____</p> <p>10 BRAD TRATENBERG</p> <p>11 Court Reporter - Notary Public</p> <p>12</p> <p>13 (This certification does not apply to</p> <p>14 any reproduction of this transcript, unless under the</p> <p>15 direct supervision of the certifying reporter.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	